4013.

SUPREME COURT OF THE UNITED STATES.

No. 158.

ERBY BOYD, PLAINTIFF IN ERROR,

vs.

WILLIAM SCOTT AND WILLIAM GREEN.

IN ERROR TO THE DISTRICT COURT, UNITED STATES, FOR THE NORTHERN DISTRICT OF ALABAMA.

INDEX.

	Original.	Print.
Original writ	1	1
Endorsement on the same	1	2
Marshal's return	2	2
Declaration	2	2
Defendants' pleas	3	3
Certificate of filing declaration	3	3
Minute entry at May term, 1846	3	3
" " " Nov'r " 1846	3	3
" " " May " 1847	3	4
" " " Nov'r " 1847	3	4
" " " " " 1848	3	4
" " " May " 1849	3	4
Affidavit of J. T. Bradford, for continuance	4	5
Minute entry at Nov'r term, 1849	5	6
" " " May " 1850	5	6
Judgment entry at Nov'r term, 1850	5	6
Minute entry of bill of exceptions being signed, sealed, &c., Nov'r, 1850.	6	7
Bill of exceptions	6	7
Deed from Augerhole and wife to Boyd	7	9
Acknowledgment and proof of execution of same	8	10
Deed from Creek nation to Creek chiefs	9	11
Patent from United States	11	13
Deed from Creek chiefs to McGehee and Thomas	12	14
Deed from McGehee and Thomas to Wm. Scott	14	16

[Gibbon, Print.]

	Original.	Print.
Deed from McGehee and Thomas to Wm. Green	15	18
Tabular statement of sales of land	15	19
Agreement between Scott and Boyd	17	20
Deposition of John D. G. Adrian	18	22
Notice of taking deposition of M. M. Houston	19	23
Deposition of M. M. Houston	20	24
Notice of taking deposition of John Knight	22	26
Deposition of John Knight	22	27
" Andrew C. Robinson	25	30
Notice of taking deposition of Wm. Tatum	27	32
Deposition of Wm. Tatum	27	33
" Isaac Allen	32	38
Notice of taking deposition of Edward Allen	34	40
Deposition of Edward Allen	34	41
Minute entry allowing writ of error	39	46
Writ of error bond	39	46
Writ of error	40	47
Citation	40	48
Certificate of authentication	41	48

THE UNITED STATES OF AMERICA.

Pleas had at a term of the district court of the United States, for the northern district of Alabama, begun and held at the court-house, in the town of Huntsville, in said district, on the fourth Monday (being the twenty-fifth day) of November, in the year of our Lord one thousand eight hundred and fifty, and in the seventy-fifth year of the sovereignty and independence of the said United States; present, the honorable John Gayle, judge of said district court.

ERBY BOYD
vs.
WILLIAM SCOTT &
WILLIAM GREEN. } 1347. Trespass, vi et armis.

Be it remembered, that heretofore, to wit, at a term of a district court of the United States, for the northern district of Alabama, begun and held at the court-house, in the town of Huntsville, in said district, on the fourth Monday in November, in the year of our Lord one thousand eight hundred and forty-five, was returned a writ of capias ad respondendum, in the names of Erby Boyd, who is a citizen of the State of Tennessee, plaintiff, and William Scott and William Green, who are citizens of the State of Alabama, residing in the northern district thereof, defendants, in the words and figures following, to wit:

Writ.

The president of the United States to the marshal of the northern district of Alabama, greeting:

We command you to take the bodies of William Scott and William Green, who are citizens of the State of Alabama, residing in said district, if to be found therein, and them safely keep, so that you have their bodies before the honorable the judge of the district court of the United States of America, for said district, to be held at the court-house in the town of Huntsville, on the fourth Monday in November next, to answer Erby Boyd, who is a citizen of the State of Tennessee, of a plea of trespass, with force and arms, wherefore they broke and entered the close of said plaintiff, to his damage six thousand dollars. The matter in dispute between the parties in this suit exceeds the sum and value, as said plaintiff avers, of five hundred dollars, exclusive of costs.

Fail not herein, and have then and there this writ.

Witness the honorable William Crawford, judge of said court, this twenty-ninth day of October, in the year of our Lord one [SEAL.] thousand eight hundred and forty-five, and in the seventieth year of the independence of the United States of America.

Issued 29th day of October, 1845.

Attest: B. T. MOORE,
Clerk of said court.

(Endorsed:) "This action of trespass vi et armis is brought by the plaintiff against the defendants, as well to try title to a certain tract or parcel of land, as to recover damages for the rents, profits, and occupation of the same, from the —— day of ———, A. D. 1836, to this time, inclusive. The said tract or parcel of land consists of the northwest and the southwest quarters of section No. thirty, (30,) of township 13, range nine east, in the Coosa land district; and said tract lies in the county of Benton, and State of Alabama, within said within mentioned northern district, and is in the occupation of said defendants. The said tract, to recover which this suit is brought, is above described according to the Government survey. It exceeds the value of five hundred dollars. The said damages also sought to be recovered by this suit, exceed that sum, exclusive, in both cases, of costs.

The plaintiff's title is derived from the treaty of 24 March, 1832, with the Creek Indians. No bail required.

S. PARSONS,
Att'y for plaintiff.

(Marshal's return:) "Executed in full, 13th November, 1845."
BENJAMIN PATTESON, *Marshal N. D. Ala.*
By his deputy,
THOMAS PATTESON."

And afterwards, to wit, at the said term of the said district court, came the plaintiff, by his attorney, and filed his declaration in said cause, in the words and figures following, to wit:

Declaration.

The United States of America, district court of the United States, for the northern district of Alabama, at Huntsville, November term, 1845.

Erby Boyd, who is a citizen of the State of Tennessee, by his attorney, complains of William Scott and William Green, who are citizens of the State of Alabama, residing in said northern district, of a plea of trespass, wherefore, with force and arms, the said defendants broke and entered the close of the said plaintiff.

For that the said plaintiff heretofore, to wit, on the —— day of ——, 1838, in said district, was lawfully seized and possessed of a certain tract or parcel of land, with its appurtenances, situate, lying, and being in Benton county, in the said State of Alabama, and in said northern district, and being the northwest and the southwest quarters of section No. thirty, of township 13, and range nine, east, in the Coosa land district. The said tract being of the value of six thousand dollars, and being the same to which one George Augerhole, the head of a Creek Indian family, as such, became entitled to, as a selection under the treaty of the —— day of ———, 1832, made between the United States of America and the Creek tribe of Indians; to which

said tract of land the said plaintiff afterwards, to wit, on the 17th day of April, 1838, became entitled, by a conveyance, by deed in fee simple, from said Augerhole and his wife, to said plaintiff. And the said plaintiff still has good title in fee simple of and to the said tract of land, and its appurtenances. And being so seized and possessed as aforesaid, afterwards, to wit, on the —— day of ———, 1838, in said district, the said defendants, with force and arms, entered and took possession of the said tract of land herein sued for, with its appurtenances, and expelled the said plaintiff wholly therefrom; and said defendants have ever since expelled, and still do expel, and wholly keep and exclude the said plaintiff from the possession, use, and occupation of said tract of land; and during all that time defendants have enjoyed, and still enjoy, the use and occupation, and received all the mesne rents and profits of said tract of land, to a great amount, to wit, to the amount of three thousand dollars; and other wrongs and injuries to said plaintiff then and there did, to his damage six thousand dollars, and so he brings his suit.

S. PARSONS,
Att'y for plaintiff.

Pleas by defendants.

(Defendants' pleas.)

"Defendants plead, in short, by consent—1st, not guilty; 2d, the statute of limitations.

WALKER & ROBINSON,
Counsel for defendants."

(Endorsed:) "Filed 20th November, 1846.
Teste: B. T. MOORE, *Clerk.*"

Minute entry at May term, 1846.

And afterwards, to wit, on the eighteenth day of May, being a day of the term of said district court, begun and held at the court-house, in the town of Huntsville, in said district, on the third Monday in said month, (May,) in the year of our Lord one thousand eight hundred and forty-six, the fo[llo]wing entry was made in said cause, viz:

"Come the parties, by their attorneys, and by their consent it is ordered by the court that this cause be continued."

Minute entry at November term, 1846.

And afterwards, to wit, on the twenty-fourth day of November, it being a day of the term of said district court, begun and held at the court-house, in the town of Huntsville, in said district, on the fourth Monday in said month, (November,) in the year of our Lord one thousand eight hundred and forty-six, an entry was made in said cause in the words and figures following, to wit:

(Endorsed:) "This action of trespass vi et armis is brought by the plaintiff against the defendants, as well to try title to a certain tract or parcel of land, as to recover damages for the rents, profits, and occupation of the same, from the —— day of ———, A. D. 1836, to this time, inclusive. The said tract or parcel of land consists of the northwest and the southwest quarters of section No. thirty, (30,) of township 13, range nine east, in the Coosa land district; and said tract lies in the county of Benton, and State of Alabama, within said within mentioned northern district, and is in the occupation of said defendants. The said tract, to recover which this suit is brought, is above described according to the Government survey. It exceeds the value of five hundred dollars. The said damages also sought to be recovered by this suit, exceed that sum, exclusive, in both cases, of costs.

The plaintiff's title is derived from the treaty of 24 March, 1832, with the Creek Indians. No bail required.

S. PARSONS,
Att'y for plaintiff.

(Marshal's return:) "Executed in full, 13th November, 1845."
BENJAMIN PATTESON, *Marshal N. D. Ala.*
By his deputy,
THOMAS PATTESON."

And afterwards, to wit, at the said term of the said district court, came the plaintiff, by his attorney, and filed his declaration in said cause, in the words and figures following, to wit:

Declaration.

The United States of America, district court of the United States, for the northern district of Alabama, at Huntsville, November term, 1845.

Erby Boyd, who is a citizen of the State of Tennessee, by his attorney, complains of William Scott and William Green, who are citizens of the State of Alabama, residing in said northern district, of a plea of trespass, wherefore, with force and arms, the said defendants broke and entered the close of the said plaintiff.

For that the said plaintiff heretofore, to wit, on the —— day of ——, 1838, in said district, was lawfully seized and possessed of a certain tract or parcel of land, with its appurtenances, situate, lying, and being in Benton county, in the said State of Alabama, and in said northern district, and being the northwest and the southwest quarters of section No. thirty, of township 13, and range nine, east, in the Coosa land district. The said tract being of the value of six thousand dollars, and being the same to which one George Augerhole, the head of a Creek Indian family, as such, became entitled to, as a selection under the treaty of the —— day of ———, 1832, made between the United States of America and the Creek tribe of Indians; to which

said tract of land the said plaintiff afterwards, to wit, on the 17th day of April, 1838, became entitled, by a conveyance, by deed in fee simple, from said Augerhole and his wife, to said plaintiff. And the said plaintiff still has good title in fee simple of and to the said tract of land, and its appurtenances. And being so seized and possessed as aforesaid, afterwards, to wit, on the —— day of ———, 1838, in said district, the said defendants, with force and arms, entered and took possession of the said tract of land herein sued for, with its appurtenances, and expelled the said plaintiff wholly therefrom; and said defendants have ever since expelled, and still do expel, and wholly keep and exclude the said plaintiff from the possession, use, and occupation of said tract of land; and during all that time defendants have enjoyed, and still enjoy, the use and occupation, and received all the mesne rents and profits of said tract of land, to a great amount, to wit, to the amount of three thousand dollars; and other wrongs and injuries to said plaintiff then and there did, to his damage six thousand dollars, and so he brings his suit.

S. PARSONS,
Att'y for plaintiff.

Pleas by defendants.

(Defendants' pleas.)

"Defendants plead, in short, by consent—1st, not guilty; 2d, the statute of limitations.

WALKER & ROBINSON,
Counsel for defendants."

(Endorsed:) "Filed 20th November, 1846.
Teste: B. T. MOORE, *Clerk.*"

Minute entry at May term, 1846.

And afterwards, to wit, on the eighteenth day of May, being a day of the term of said district court, begun and held at the court-house, in the town of Huntsville, in said district, on the third Monday in said month, (May,) in the year of our Lord one thousand eight hundred and forty-six, the fo[llo]wing entry was made in said cause, viz:

"Come the parties, by their attorneys, and by their consent it is ordered by the court that this cause be continued."

Minute entry at November term, 1846.

And afterwards, to wit, on the twenty-fourth day of November, it being a day of the term of said district court, begun and held at the court-house, in the town of Huntsville, in said district, on the fourth Monday in said month, (November,) in the year of our Lord one thousand eight hundred and forty-six, an entry was made in said cause in the words and figures following, to wit:

"Come the parties, by their attorneys, and on application of said plaintiff, it is ordered that this cause be continued; and on motion of said defendants, by their attorneys, it is ordered by the court that said defendants recover against said plaintiff all the costs that have accrued in this cause up to and including the present term; and that said costs be paid within three months from the rise of this court."

Minute entry at May term, 1847.

And afterwards, to wit, on the eighteenth day of May, being a day of the term of said district court, begun and held at the court-house, in the town of Huntsville, in said district, on the third Monday in said month, (May,) in the year of our Lord one thousand eight hundred and forty-seven, an entry was made in said cause in the words following, to wit:

"Come the parties, by their attorneys, and on the affidavit of said defendant, William Scott, it is ordered that this cause be continued."

Minute entry at November, 1847.

And afterwards, to wit, on the twenty-second day of November, being a day of the term of said district court, begun and held at the court-house, in the town of Huntsville, in said district, on the fourth Monday in said month, (November,) in the year of our Lord one thousand eight hundred and forty-seven, an entry was made in said cause in the words following, to wit:

"Come the parties, by their attorneys, and on the affidavit of Jacob T. Bradford, on the part of said defendants, it is ordered that this cause be continued."

Minute entry at November, 1848.

And afterwards, to wit, on the twenty-eighth day of November, being a day of the term of said district court, begun and held at the court-house, in the town of Huntsville, in said district, on the fourth Monday in said month, (November,) in the year of our Lord one thousand eight hundred and forty-eight, an entry was made in said cause in the words following, to wit:

"Come the parties, by their attorneys, and on the affidavit of said defendant, William Scott, showing sufficient cause, it is ordered that this cause be continued."

Minute entry at May, 1849.

And afterwards, to wit, on the twenty-first day of May, being a day of the term of said district court, begun and held at the court-house, in the town of Huntsville, in said district, on the third Monday in said month, (May,) in the year of our Lord one thousand eight hundred and forty-nine, an entry was made in said cause in the words following, to wit:

"Come the parties, by their attorneys, and by their consent it is ordered, that the depositions filed in said cause since the last continuance be opened."

And afterwards, to wit, on the twenty-third day of May aforesaid, being a further day of the term last aforesaid, a further entry was made in said cause in the words and figures following, to wit:

"Come the parties, by their attorneys, and on the affidavit this day filed in said cause, it is ordered that said cause be continued, on the payment of the costs of this term by said defendants."

Affidavit of J. T. Bradford for continuance.

(Affidavit referred to in the foregoing entry.)

In the district court of the United States, for the northern district of Alabama.

ERBY BOYD
vs.
WILLIAM SCOTT & William Green.

Jacob T. Bradford, being sworn, says: That he is one of the vendors of defendants, and as such has taken an active part in the defence of this suit. At the last term of this court he promised the defendants to go to Texas and take the deposition of John D. G. Adrian, heretofore taken in this cause; finding it inconvenient to go, he employed a man to go in his stead. After some delay, this person declined to go in consequence of the prevalence of the cholera on the great highways leading to the residence of the witness; and the same cause deterred this affiant from going. Immediately thereafter, affiant wrote to a relative of his, living within thirty or thirty-five miles of the witness, and requested him to attend to the retaking of this deposition. He had no doubt then, and has none now, that this relative would and did attend to it promptly, and that said deposition was and is retaken, as soon as circumstances would allow. He wrote this letter so long back as to allow full time to take said deposition and have it here by the present term of this court, according to the ordinary mode of communication. In addition to the facts stated by said witness, for which reference is had to his deposition now on file, he expects to prove *prove* by said witness that he, the witness, was employed as an interpreter by the officer or agent of the U. S. Government, whose duty it was to enrol the names of all the Creek Indians who took reservations under the treaty of March, 1832; that, by the direction of said agent and officer, he asked George Augerhole if he intended or wished to take a reservation under said treaty. To this said Augerhole replied, that he did not; that he was a Cherokee, and intended to go and live amongst his own people; that he did not intend to live amongst the Creeks. That this application and refusal was made in the summer, or early in the fall, of 1832, and were then communicated to said agent and officer. He expects to prove, further, that he was a subscribing witness to the deed from Au-

gerhole to Boyd, and that he then saw Boyd pay Augerhole no money. He further expects to prove by him that Boyd bought of Augerhole before the expiration of five years after the ratification of said treaty, and that said deed was but a consummation of the trade made before the expiration of said five years. He is expecting said deposition by every mail, and has no doubt but that it will be here by the next term of this court. This application is not made for delay.

J. T. BRADFORD.

Subscribed and sworn in open court, this 23d May, 1849.

B. T. MOORE, *Clerk*.

(Endorsed:) Filed 23d May, 1849.

Teste: B. T. MOORE, *Clerk*.

And afterwards, to wit, on the 28th day of November, being a day of the term of the said district court, begun and held at the court-house in the town of Huntsville, in said district, on the fourth Monday in said month, (November,) in the year of our Lord one thousand eight hundred and forty-nine, an entry was made in said cause in the words following, to wit:

Minute entry at November term, 1849.

"Come the parties, by their attorneys, and on the showing of said plaintiff, it is ordered, that this cause be continued."

And afterwards, to wit, on the twenty-first day of May, being a day of the term of said district court, begun and held at the court-house in the town of Huntsville, in said district, on the third Monday in said month, (May,) in the year of our Lord one thousand eight hundred and fifty, an entry was made in said cause in the words following, to wit:

Minute entry at May term, 1850.

"Come the parties, by their attorneys, and on the affidavit of said plaintiff showing sufficient cause, it is ordered, that this cause be continued."

And afterwards, to wit, on the twenty-seventh day of November, being a day of the term of said district court, begun and held at the court-house in the town of Huntsville, in said district, on the fourth Monday in said month, (November,) in the year of our Lord one thousand eight hundred and fifty, an entry was made in said cause in the words following, to wit:

Minute entries at November term, 1850.

"Come the parties, by their attorneys, and thereupon comes a jury of good and lawful men, to wit:

James J. Donegan, William J. McCalley, Ferdinand L. Hammond, James H. Mastin, Dudley Sale, John L. Fariss, James H. Weakley, David B. Bibb, Archibald McDaniel, George Steale, Josiah D. Battle,

William Flemming, who being duly elected, tried, and sworn, the truth to speak upon the issues joined, and having heard a part of the testimony in said cause adduced, are adjourned until to-morrow morning."

And afterwards, to wit, on the twenty-eighth day of the said month, November, being a further day of the term last aforesaid, an entry was made in said cause in the words following, to wit:

"This day came the parties, by their attorneys, and the jurors aforesaid, who were on yesterday adjourned until this morning; and the jurors aforesaid having heard the balance of the testimony by the parties adduced, the arguments of counsel, and the charge of the court in said cause, retired to consider of their verdict."

And afterwards, to wit, on the twenty-ninth day of said month, November, being a further day of the term last aforesaid, an entry was made in said cause, in the words following, to wit:

"This day came again the parties, by their attorneys, and the jurors aforesaid came into court, and on their oath say, they find said issues for the defendants. It is therefore considered by the court, that said plaintiff, by his said action take nothing, but he, in mercy, &c.; and that said defendants go hence, &c., and recover against said plaintiff the costs herein expended, &c."

And afterwards, to wit, on the day and year last aforesaid, at the term last aforesaid of said court, a further entry was made in said cause, in the words following, to wit:

"Pending the trial of this cause, the plaintiff excepted to opinions of the court, and tendered a bill of exceptions, which is signed and sealed by the court, and ordered to be made a part of the record in said cause."

Bill of exceptions.

(Bill of exceptions.)

ERBY BOYD
vs.
WILLIAM SCOTT and William Green.

District court of the United States, for the northern district of Alabama.

November term, 1850.

Be it remembered, that, upon the trial of this cause, it was proved by the plaintiff in this suit, that at, and before, and after the treaty of the United States with the Creek tribe of Indians, dated on the 24th March, 1832, George Augerhole, who was the head of a Creek family, was in possession of the land in controversy, having a dwelling on the same, in which he lived with his family, and that he had some twelve acres cleared and in cultivation. The said George Augerhole was himself a Cherokee Indian, but had at and before the treaty a Creek woman for his wife, by whom he had a child, and they all lived together. The proof was that he was not among those of whom a census was

taken according to the treaty of 24th March, 1832; nor was he ever located by the agent of the Government. There was much proof on both sides, pro and con., as to whether he intended to claim the land in controversy under the treaty. There was also proof tending to show that he was intimidated from doing so by fear superinduced of threats against Indians generally, and some acts of violence done on the premises in controversy, in the summer of the year 1833. These acts were done by white persons, who had settled in the country, some of whom had expressed a determination to drive the Indians away, and some of whom had settled on the land in controversy. There was proof tending to show that Augerhole and his family lived on the premises until the summer of 1834, at which time some of the proof showed that he was forced away by some of the whites. There was also proof that word was sent him by a white man, if he claimed his land as a reservee, under the treaty, he would be sent to jail, and his ears cut off. But no proof that the message was communicated to him. From this time the proof showed that Augerhole did not live on the premises, but when he left, he moved his bed and furniture to the house of a neighbor, a white man, in whose charge he left the key of his house which was locked, and in which there were several bee hives, and other property. Augerhole went to Ball Play, which was some seven miles off, and near the line dividing the Creek from the Cherokee nation, and in the Cherokee nation.

The proof also tended to show, that at the time he left he rented the premises to a white man by the name of Isaac Allen, who took possession, and put up some buildings, claiming, at the time he did so, to hold under Augerhole. This was in 1834. There was also proof tending to show that during the temporary absence of Allen from home a white man, by the name of Benson, in the same year, took possession of the premises, and held the same from that time until about the 20th Dec'r, 1836. The proof tended to show, that several times during the possession of the said Benson, Augerhole was on the premises, but not in the house, and that he made application to several persons to know how he should get possession.

There was also proof tending to show that he made application to be located. The proof on this subject, however, was conflicting; and the locating agent of the Government testified that he never went to Augerhole's premises to locate him, because he had not been enrolled. This agent also testified that he was instructed by the War Department not to locate any Indian who was not enrolled; and further testified that Augerhole never made application to him to be located, nor desired it in his presence. They were well acquainted. The proof showed that Augerhole remained in the country until the summer of 1838, when he was taken west by the troops of the U. S. with the Cherokee tribe; the Creek tribe having been removed in the years 1836 and 1837. There was no proof as to the manner in which Augerhole was first taken by the troops, but there was proof showing that after he was taken, he, together with about 500 Cherokees, were kept by the troops

at Fort Larkins, in the State of Georgia, and there put under guard and so kept until they were transported by the troops to Ross landing, in the State of Tennessee, and thence to the west of the Mississippi. The proof also showed that Augerhole had always expressed his unwillingness to go west, and his desire to remain in the country. There was proof on the part of the defendants of the declarations of Augerhole that he was a Cherokee, and did not wish land in the Creek nation. These declarations all transpired after the threats and acts of force above mentioned, and long before he was carried away by the troops of the U. S.

The pltff. then introduced a deed from Augerhole to him, dated 17th April, 1838, and having proved its execution, read the same, with its authentications, to the jury; said deed, and its authentications, are in the words and figures following:

Deed from Augerhole and wife to Erby Boyd.

(Deed of conveyance from George Augerhole and wife to Erby Boyd.)

THE STATE OF ALABAMA,
Benton county.

This indenture, made and entered into on the seventeenth day of April, in the year of our Lord one thousand eight hundred and thirty-eight, between George Augerhole and Wakiah, wife of said George Augerhole, of the county and State aforesaid, of the first part, and Erby Boyd, of the county of Monroe, and State of Tennessee, of the other part, witnesseth: That the said party of the first part, for and in consideration of the sum of eight hundred dollars, to the said party of the first part in hand paid by the said party of the second part before the making and delivery of these presents, the receipt whereof is hereby acknowledged, have, and by these presents do hereby grant, bargain, sell, alien, and confirm, unto the said party of the second part, all that tract or parcel of land situate in Benton county aforesaid, and particularly known and designated as the west half of section thirty, in township thirteen, in range nine east, of the basis meridian in the Coosa land district, to which said tract of land the said George Augerhole is entitled under and by virtue of the treaty made between the Creek tribe of Indians and the United States, of the twenty-fourth day of March, 1832, as one of the heads of Creek Indian families.

To have and to hold said tract of land to the said party of the second part, his heirs and assigns, to the sole and only proper use of the said party of the second part, his heirs and assigns, forever. And the said party of the first part hereby covenant and agree, to and with the said party of the second part, that they will warrant and forever defend the title to the said above bargained tract of land to the said party of the second part, his heirs and assigns, forever.

In testimony whereof the said party of the first part have hereunto

set their hands and affixed their seals, on the day and year first above written.

his
GEORGE X AUGERHOLE. [SEAL.]
mark.
her
WAKIAH. X [SEAL.]
mark.

Signed, sealed, and delivered in presence of us, on the day and date hereof.

THOMAS C. HINDMAN.
JOHN D. G. ADRIAN.

THE STATE OF ALABAMA.
Benton county.

This day personally came before me, Horatio Griffin, esquire, an acting justice of the peace for the county of Benton aforesaid, the above bounden George Augerhole, and Wakiah, wife of said George, both personally known to me to be the persons who subscribed the foregoing deed of conveyance, and acknowledged that they signed, sealed, and executed, and delivered the foregoing deed of conveyance, for the tract of land therein described, to the said Erby Boyd, the grantee therein named, freely and voluntarily, on the day of the date thereof. And the said Wakia, wife of the said George Augerhole, having been by me privately examined, separate and apart from her said husband, touching the execution by her of the foregoing said deed, acknowledged that she signed, sealed, executed, and delivered the same to the said Boyd, therein named, freely and voluntarily, without any fears, threats, or compulsion of her said husband; all which I, the said justice, do hereby certify for registration, according the forms of the statute in such cases made and provided.

Given under my hand and seal, on the 17th day of April, in the year of our Lord one thousand eight hundred and thirty-eight.

HORATIO GRIFFIN, [SEAL.]
A justice of the peace for Benton county aforesaid.

STATE OF ALABAMA,
Benton county, ss:

Personally appeared before me, Matthew M. Houston, the clerk of the county court, in and for the county aforesaid, the said above named John D. G. Adrian, one of the subscribing witnesses to the foregoing deed from said George Augerhole and Wakiah, his wife, to Erby Boyd, who being first duly sworn, deposeth and saith, that he saw the above named George Augerhole and Wakiah, his wife, whose names are subscribed to the said deed, sign, seal, and deliver the same to the said Erby Boyd; that he, this deponent, subscribed his name as a witness thereunto in the presence of the said George Augerhole and said Wakiah; and that he saw the other subscribing witness, to wit, Thomas

C. Hindman, sign the same in the presence of said George Augerhole and Wakiah, and in the presence of each other, on the day and year therein named.

Given under my hand and seal, this twenty-third day of April, A. D. 1838.

M. M. HOUSTON,
Clerk. [SEAL.]

STATE OF ALABAMA,
Benton county.

I, Matthew M. Houston, clerk of the county court for said county, do hereby certify, that the foregoing deed has been duly recorded in my office, in book "D," page 480.

Given under my hand and private seal, having no seal of office, at office, this 28th day of April, 1838.

[L. S.] M. M. HOUSTON, *Clerk.*"

The defendants read to the jury, having proved the same, a deed from the Creek nation to the Creek chiefs, of which the following is a copy.

Deed from the Creek nation to the Creek chiefs.

(A deed from the Creek nation to the Creek chiefs.)

"Know all men by these presents, that the undersigned chiefs and headmen in and for the Creek tribe east of the Mississippi, in full council assembled, on the fourth day of October, in the year of our Lord one thousand eight hundred and thirty-five, at Peter Dudley's, in the State of Alabama, Tallapoosa county, do hereby, for and in behalf of said tribe, make the following assignment of the twenty-nine sections, which said tribe is authorized to assign to persons being Creeks, by the sixth article of the treaty made at Washington, on the twenty-fourth of March, in the year of our Lord one thousand eight hundred and thirty-two. We do therefore, by the power vested in us by the said treaty, assign to James Island, William McGilvray, Benjamin Marshal, and Oswitchee-fixico, the following named sections of land, to wit, section thirty-six, in township fourteen, range seven; sections one, ten, eleven, twelve, thirteen, fifteen, twenty-six, thirty-one, and the south half of section twenty-one, in township fourteen, range eight; section twenty-five, township thirteen, range eight; sections twenty, twenty-one, and thirty, in township thirteen, of range nine, east, in the Coosa district; sections thirty-one, thirty-two, and thirty-three, in township fifteen; and sections eight, seventeen, and twenty-one, in township fourteen, range twenty-five; sections twenty-five, twenty-six, thirty-five, and thirty-six, in township seventeen, of range twenty-six; to Napoleon Moore, (son of Billy Moore,) the south half of section seven, in township twenty-one, of range thirty-nine.

To that portion of the Creek tribe residing west of the Mississippi, sections four, five, six, nine, and twenty, in township fourteen, range twenty-five east, in the Tallapoosa district.

In testimony whereof we have hereunto set our hands and seals, the day and year above written.

Opoth-le-to-ho-lo,	his x mark.	[SEAL.]
Little Doctor,	his x mark.	[SEAL.]
Kotchar Tusta Nucker,	his x mark.	[SEAL.]
Tuck-a-batcher-fixico,	his x mark.	[SEAL.]
Mad Blue,	his x mark.	[SEAL.]
Tuck-a-Batchee Micco,	his x mark.	[SEAL.]
Afose-hadjo,	his x mark.	[SEAL.]
Octiarchu-hadjo,	his x mark.	[SEAL.]
Jim Boy,	his x mark.	[SEAL.]
Laughter-micco,	his x mark.	[SEAL.]
Suston-muck-hadjo,	his x mark.	[SEAL.]
Artus-micco,	his x mark.	[SEAL.]
Tuskonir-hadjo,	his x mark.	[SEAL.]
Inthlaunis-hadjo,	his x mark.	[SEAL.]
Tommolth-micco,	his x mark.	[SEAL.]
Onis-hadjo,	his x mark.	[SEAL.]
Fose-hatchee-fixico,	his x mark.	[SEAL.]
Tustonnucka-chopco,	his x mark.	[SEAL.]
Absolem Island,	his x mark.	[SEAL.]
Emathla-hadjo,	his x mark.	[SEAL.]
Pascove Emaltha,	his x mark.	[SEAL.]
Hobie-fixico,	his x mark.	[SEAL.]
Charlo-hadjo-co-cho-ko-ney,	his x mark.	[SEAL.]
Carpitch Yohols,	his x mark.	[SEAL.]
Coosa-fixico,	his x mark.	[SEAL.]
Tillipe-fixico,	his x mark.	[SEAL.]
Tixico-hadjo,	his x mark.	[SEAL.]
Stowica,	his x mark.	[SEAL.]
Laughter-mortoher,	his x mark.	[SEAL.]
Noch-o-pipa-hadjo,	his x mark.	[SEAL.]
Ho-tul-ke-Emathla,	his x mark.	[SEAL.]
Tustamuck-ku,	his x mark.	[SEAL.]
Old King,	his x mark.	[SEAL.]
David Barnett,	his x mark.	[SEAL.]
Che Cotta-fixico,	his x mark.	[SEAL.]
Marto-a-hadjo,	his x mark.	[SEAL.]
Kotcha Ematta,	his x mark.	[SEAL.]
Nar-bos-che-fixico,	his x mark.	[SEAL.]
Charle-bu,	his x mark.	[SEAL.]
Inchaunis-hadjo,	his x mark.	[SEAL.]
Hobie-hatka,	his x mark.	[SEAL.]
Abba-emathlar,	his x mark.	[SEAL.]
Tustan-muck-u-Emarlar,	his x mark.	[SEAL.]

Signed, sealed, and executed in the presence of—
J. T. BRADFORD,
Register U. S. Land Office at Mardisville, Ala.
J. W. A. SANFORD,
WM. DOUGHERTY,
ALX. H. SOMMERVILLE,
LEONARD TARRANT,
Sub-agent E. Creeks.

I certify that the foregoing is a true and correct copy of the original assignment on file in this office.
Office Indian Affairs, March 29, 1838.
C. A. HARRIS, *Com'r.*"

Be it remembered, that C. A. Harris, who has signed the foregoing certificate, is commissioner of Indian affairs; and that to his attestations full faith and credit are and ought to be given.

In testimony whereof I have hereunto subscribed my name, and caused the seal of the Department to be affixed, on this twen-
[SEAL.] ty-ninth day of March, in the year of our Lord one thousand eight hundred and thirty-eight.

S. COOPER,
Acting Secretary of War.

Also a patent from the United States to said chiefs, of which the following is a copy:

Patent from the United States to the Creek chiefs.

Patent from the United States to Creek chiefs.

The United States of America, to all to whom these presents shall come, greeting:

Whereas, under the sixth article of the treaty, made and concluded at the city of Washington on the twenty-fourth day of March, one thousand eight hundred and thirty-two, between the United States and the Creek tribe of Indians, by which it is provided that twenty-nine sections should be located, and patents for the same be issued to those persons, being Creeks, to whom the same might be assigned by the Creek tribe; the chiefs and headmen of the said tribe in council, on the seventh day of October, one thousand eight hundred and thirty-five, assigned to James Islands, William McGilvery, Benjamin Marshall, and Oswitchee-fixico, of the said tribe, section thirty, in township thirteen, of range nine, containing six hundred and forty-one acres and twenty-one hundredths of an acre, in the Coosa land district, in the State of Alabama, as being one [of] the sections to which the said tribe was entitled under the said sixth article, and that assignment having been approved by the President of the United States on the sixteenth day of April, one thousand eight hundred and thirty-six: Now know ye, that there is therefore granted by the United States, unto the said

To that portion of the Creek tribe residing west of the Mississippi, sections four, five, six, nine, and twenty, in township fourteen, range twenty-five east, in the Tallapoosa district.

In testimony whereof we have hereunto set our hands and seals, the day and year above written.

Opoth-le-to-ho-lo,	his x mark.	[SEAL.]
Little Doctor,	his x mark.	[SEAL.]
Kotchar Tusta Nucker,	his x mark.	[SEAL.]
Tuck-a-batcher-fixico,	his x mark.	[SEAL.]
Mad Blue,	his x mark.	[SEAL.]
Tuck-a-Batchee Micco,	his x mark.	[SEAL.]
Afose-hadjo,	his x mark.	[SEAL.]
Octiarchu-hadjo,	his x mark.	[SEAL.]
Jim Boy,	his x mark.	[SEAL.]
Laughter-micco,	his x mark.	[SEAL.]
Suston-muck-hadjo,	his x mark.	[SEAL.]
Artus-micco,	his x mark.	[SEAL.]
Tuskonir-hadjo,	his x mark.	[SEAL.]
Inthlaunis-hadjo,	his x mark.	[SEAL.]
Tommolth-micco,	his x mark.	[SEAL.]
Onis-hadjo,	his x mark.	[SEAL.]
Fose-hatchee-fixico,	his x mark.	[SEAL.]
Tustonnucka-chopco,	his x mark.	[SEAL.]
Absolem Island,	his x mark.	[SEAL.]
Emathla-hadjo,	his x mark.	[SEAL.]
Pascove Emaltha,	his x mark.	[SEAL.]
Hobie-fixico,	his x mark.	[SEAL.]
Charlo-hadjo-co-cho-ko-ney,	his x mark.	[SEAL.]
Carpitch Yohols,	his x mark.	[SEAL.]
Coosa-fixico,	his x mark.	[SEAL.]
Tillipe-fixico,	his x mark.	[SEAL.]
Tixico-hadjo,	his x mark.	[SEAL.]
Stowica,	his x mark.	[SEAL.]
Laughter-mortoher,	his x mark.	[SEAL.]
Noch-o-pipa-hadjo,	his x mark.	[SEAL.]
Ho-tul-ke-Emathla,	his x mark.	[SEAL.]
Tustsmuck-ku,	his x mark.	[SEAL.]
Old King,	his x mark.	[SEAL.]
David Barnett,	his x mark.	[SEAL.]
Che Cotta-fixico,	his x mark.	[SEAL.]
Marto-a-hadjo,	his x mark.	[SEAL.]
Kotcha Ematta,	his x mark.	[SEAL.]
Nar-bos-che-fixico,	his x mark.	[SEAL.]
Charle-bu,	his x mark.	[SEAL.]
Inchaunis-hadjo,	his x mark.	[SEAL.]
Hobie-hatka,	his x mark.	[SEAL.]
Abba-emathlar,	his x mark.	[SEAL.]
Tustan-muck-u-Emarlar,	his x mark.	[SEAL.]

Signed, sealed, and executed in the presence of—
J. T. BRADFORD,
Register U. S. Land Office at Mardisville, Ala.
J. W. A. SANFORD,
WM. DOUGHERTY,
ALX. H. SOMMERVILLE,
LEONARD TARRANT,
Sub-agent E. Creeks.

I certify that the foregoing is a true and correct copy of the original assignment on file in this office.
Office Indian Affairs, March 29, 1838.
C. A. HARRIS, *Com'r.*"

Be it remembered, that C. A. Harris, who has signed the foregoing certificate, is commissioner of Indian affairs; and that to his attestations full faith and credit are and ought to be given.

In testimony whereof I have hereunto subscribed my name, and caused the seal of the Department to be affixed, on this twen-
[SEAL.] ty-ninth day of March, in the year of our Lord one thousand eight hundred and thirty-eight.

S. COOPER,
Acting Secretary of War.

Also a patent from the United States to said chiefs, of which the following is a copy:

Patent from the United States to the Creek chiefs.

Patent from the United States to Creek chiefs.

The United States of America, to all to whom these presents shall come, greeting:

Whereas, under the sixth article of the treaty, made and concluded at the city of Washington on the twenty-fourth day of March, one thousand eight hundred and thirty-two, between the United States and the Creek tribe of Indians, by which it is provided that twenty-nine sections should be located, and patents for the same be issued to those persons, being Creeks, to whom the same might be assigned by the Creek tribe; the chiefs and headmen of the said tribe in council, on the seventh day of October, one thousand eight hundred and thirty-five, assigned to James Islands, William McGilvery, Benjamin Marshall, and Oswitchee-fixico, of the said tribe, section thirty, in township thirteen, of range nine, containing six hundred and forty-one acres and twenty-one hundredths of an acre, in the Coosa land district, in the State of Alabama, as being one [of] the sections to which the said tribe was entitled under the said sixth article, and that assignment having been approved by the President of the United States on the sixteenth day of April, one thousand eight hundred and thirty-six: Now know ye, that there is therefore granted by the United States, unto the said

James Islands, William McGilvery, Benjamin Marshall, and Oswitchee-fixico, and to their heirs, the tract of land above described; to have and to hold the said tract, with the appurtenances, unto the said James Islands, William McGilvery, Benjamin Marshall, and Oswitchee-fixico, and to their heirs and assigns forever.

In testimony whereof I, Andrew Jackson, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed. Given under my hand at the city of Washington, the eighteenth day of November, in the year of our Lord one thousand eight hundred and thirty-six, and of the independence of the United States the sixty-first.

[SEAL.]

By the President:

ANDREW JACKSON,
By A. J. DONELSON, *Sec'y.*
HUDSON M. GARLAND,
Recorder of the Gen'l Land Office.

Recorded vol. 1, page 4, Creek patents, Ex.

A deed from said chiefs to McGehee and Thomas, of which the following is a copy:

Deed from James Islands and others to McGehee and Thomas.

Jas. Islands and als. to Wm. McGehee and Jno. H. Thomas.—Deed.

Whereas a treaty between the United States of America and the Creek tribe of Indians was made and concluded at the city of Washington, on the 24th day of March, 1832; and by the second article of said treaty, after the general cession of the land of said tribe east of the Mississippi, certain parcels of land were allowed and reserved to the principal chiefs and heads of families of said tribe; and also, further, by the first part of the sixth article of said treaty, other lands were allowed to said tribe in the words following, viz., twenty-nine sections in addition to the foregoing may be located, and patents for the same shall then issue to those persons, being Creeks, to whom the same may be assigned by the Creek tribe. And whereas, at a general council of the said tribe, and of the principal chiefs and headmen of the nation, assembled, begun, and held at the house of Peter Dudley, esq., in the county of Tallapoosa, on the second day of October, A. D. 1835, by virtue of the right and power in said tribe, by the last mentioned article of the treaty aforesaid vested, the said tribe relinquished, released, assigned over, and conveyed, unto Benjamin Marshall, James Island, Oswitch-fixico, and Wm. McGilvery, (of said tribe,) all their right, title, property, and interest in and to twenty-three and one-half sections of said twenty-nine sections, allowed and located, &c., as aforesaid, viz., section number 25, in township number 13, and range number 8; section 1, 14, 8; section 10, 14, 8; section 11, 14, 8; section 12, 14, 8; section 13, 14, 8; section 15, 14, 8; section 26, 14, 8; section 31, 14, 8; south half of section 21, 14, 8; section 36,

14, 7; section 20, 13, 9; section 21, 13, 9; section 30, 13, 9; section 31, 15, 25; section 32, 15, 25; section 33, 15, 25; section 25, 17, 26; section 26, 17, 26; section 35, 17, 26; section 36, 17, 26; section 8, 14, 25; section 17, 14, 25; and section 21, 14, 25. Now this indenture witnesseth, that we, the aforesaid Benjamin Marshall, James Island, Oswitch-fixico, and William McGilvery, (of the Creek tribe of Indians in the State of Alabama,) for and in consideration of the sum of two thousand dollars, to us in hand paid by William McGehee and John H. Thomas, the receipt whereof we do hereby acknowledge, have given, granted, bargained, sold, and by these presents do give, grant, bargain, sell, alien, release, convey, and confirm unto the said William McGehee and John H. Thomas, their heirs and assigns forever, the certain tracts of land (the same being parcel of the aforesaid tracts to us assigned as aforesaid) situate in the county of Macon, and State of Alabama, viz., section thirty-three, in township fifteen, of range twenty-five; sections eight and seventeen, in township fourteen, range twenty-five, Tallapoosa district; to have and to hold the above granted and bargained premises, with the appurtenances thereof, to them, the said William McGehee and John H. Thomas, and to their heirs and assigns, to the proper use and behoof of them, their heirs and assigns, forever. And we, the said Benjamin Marshall, James Island, Oswich-fixico, and William McGilvery, for ourselves, and our heirs, executors, and administrators, do covenant, to and with the said William McGehee and John H. Thomas, and to and with their heirs, executors, administrators, and assigns, that by virtue of the assignment to us as aforesaid, we have good and lawful right and authority to sell and convey the same to the said William McGehee and John H. Thomas, in manner and form aforesaid; and that we will warrant and defend the title to the same to the said William McGehee and John H. Thomas, and to their heirs and assigns, against all lawful claims and demands of any person or persons whatsoever.

In witness whereof we have hereunto set our hands and affixed our seals, this 26th day of October, A. D. 1835.

B. MARSHALL, [SEAL.]

his
JAMES X ISLAND, [SEAL.]
mark.

his
OSWITCH X FIXICO, [SEAL.]
mark.

his
WILLIAM X McGILVERY. [SEAL.]
mark.

Signed, sealed, and delivered in presence of—
H. G. BARCLEY,
R. D. ROWLAND,
JOHN B. HOGAN.

STATE OF ALABAMA, *Mobile county.*

Personally appeared before me, Charles J. Fox, a notary public, in

and for said county and State, duly commissioned and sworn, residing in the city of Mobile, the above named John B. Hogan, one of the subscribing witnesses to the foregoing deed, who, being first duly sworn, deposeth and saith, that he saw the above named B. Marshall, James Island, Oswich Fixico, and William McGilvery, whose names are subscribed thereto, sign, seal, and deliver the same to the said William McGehee and John H. Thomas; that he, this deponent, subscribed his name as a witness thereto, in the presence of the said B. Marshall, James Island, Oswich Fixico, and William McGilvery; and that he saw the other subscribing witnesses, H. G. Barclay and R. D. Rowland, sign the same in the presence of the said Benjamin Marshall, James Island, Oswich Fixico, and William McGilvery, and in the presence of each other, on the day and year therein named, to wit, on the 26th day of October, 1835.

[L. S.] Witness my hand and seal notarial, this 28th day of February, A. D. 1838, at Mobile, Alabama.

JOHN B. HOGAN.
CHARLES J. FOX,
Notary public.

Recorded in my office. C. J. F.

STATE OF ALABAMA, *Benton county.*

Personally appeared before me, Matthew M. Houston, clerk of the county court in and for said county, R. D. Rowland, one of the subscribing witnesses to the foregoing deed of conveyance, from B. Marshall and others, to William McGehee and John H. Thomas, and made oath that he seen the same signed, sealed, and delivered for the purposes therein contained; and that Hugh G. Barclay and John B. Hogan signed the same, at the time said deed was executed, as witness.

[L. S.] Given under my hand and private seal, having no seal of office, at office in Jacksonville, this 27th day of May, 1836.

M. M. HOUSTON, *Clerk.*

STATE OF ALABAMA, *Benton county.*

I, Matthew M. Houston, clerk of the county court, in and for the county of Benton aforesaid, certify, that the foregoing deed of conveyance from B. Marshall and others to William McGehee and John H. Thomas, was filed in my office on the 27th day of May, 1836, and is duly recorded in book C, page 341.

Given under my hand this 27th day of May, 1836.

M. M. HOUSTON, *Clerk.*

And also a deed from said McGehee and Thomas to Scott, for the N. W. ¼, and to Green for the S. W. ¼, of the land in controversy, of which the following are copies:

Wm. McGehee and John H. Thomas and wife to Wm. Scott—deed.

(Deed from McGehee and Thomas to William Scott.)

"This indenture, made this twentieth day of October, in the year

of our Lord one thousand eight hundred and forty-one, between William McGehee, of Benton county, and John H. Thomas and Sarah Ann Thomas, his wife, of the county of Coosa, and State of Alabama, of the first part; and William Scott, of Benton county, and State aforesaid, of the second part, witnesseth: That whereas the said party of the first part, for and in consideration of the sum of three thousand dollars, to them in hand paid, the receipt whereof is hereby acknowledged, hath this day bargained and sold, and by these presents doth bargain and sell, enfeoff and convey, unto the said William Scott, his heirs and assigns forever, all that certain tract or parcel of land, known and distinguished as the northwest quarter of section thirty, township thirteen, and range nine, in the Coosa land district; to have and to hold to the said William Scott, his heirs and assigns forever, together with all the rights, privileges, and appurtenances thereunto belonging, or in any wise appertaining. And the first parties, themselves, their heirs, executors and administrators, do, and by these presents will, forever warrant and defend the said title from themselves, their heirs, and from all and every person or persons whatsoever.

In testimony whereof the said first party hath hereunto set his hand, affixed his seal, this day and date above written.

WILLIAM McGEHEE, [SEAL.]
[SEAL.]
JOHN H. THOMAS, [SEAL.]
SARAH ANN THOMAS. [SEAL.]

Signed, sealed, and delivered in presence of—
Interlined before signing:
W. H. ESTILL,
E. T. SMITH,
as to McGehee.

In presence of—
PINCKNEY STONE,
J. B. ROGERS."

STATE OF ALABAMA, *Coosa county.*

I, John H. Canant, acting justice of the peace, do hereby certify, the above named John H. Thomas and Sarah Ann Thomas, as his wife, this day personally appeared before me, who acknowledged that they freely and voluntarily signed, sealed, and delivered the foregoing deed on the day and year therein mentioned, to the aforesaid William Scott. All which I do hereby certify for registration.

Given under my hand and seal, on this 23d of March, 1842.

JOHN H. CANANT, *J. P.* [SEAL.]

Filed in office, February 9th, 1843.

M. M. HOUSTON, *Clerk.*

Recorded, February 13th, 1843, in book G, page 498.

M. M. HOUSTON, *Clerk.*"

William McGehee and Jno. H. Thomas and wife to Wm. Green—deed.

(Deed from McGehee and Thomas and wife to Wm. Green.)

This indenture, made this the twenty-fourth day of September, in the year of our Lord one thousand eight hundred and forty-two, between William McGehee, John H. Thomas, and Sarah Ann Thomas, of the county of ———, and State of Alabama, of the first part, and William Green, of the same county and State aforesaid, of the second part, witnesseth: That whereas the said party of the first part, for and in consideration of the sum of three thousand two hundred dollars to them in hand paid, the receipt whereof is hereby acknowledged, hath this day bargained and sold, and by these presents doth bargain and sell, enfeoff and convey, unto the said William Green, his heirs and assigns forever, all those certain tracts or parcels of land known and distinguished as the east half of section thirty; also the southwest quarter of the same section, in township thirteen, of range nine east, in the Coosa land district, *the Coosa land district*. To have and to hold to the said William Green, his heirs and assigns, forever; together with all the rights, privileges, and appurtenances thereunto belonging or in anywise appertaining. And the first party for himself, his heirs, executors, and administrators, do, and by these presents will, forever warrant and defend the said title, from themselves, their heirs, and from all and every person or persons whatsoever.

In testimony whereof the said first party hath hereunto set his hand and affixed his seal, this day and date above written.

WILLIAM McGEHEE, [L. S.]
JOHN H. THOMAS, [L. S.]
SARAH ANN THOMAS. [L. S.]

Signed, sealed, and delivered in the presence of—
JOHN STEWART,
HENRY TAYLOR.

STATE OF ALABAMA, *Benton county.*

Personally appeared before me, M. M. Houston, clerk of the court *court* of said county, the above named William McGehee, who acknowledged that he signed, sealed, and delivered the same, on the day and year therein named, to the aforesaid William Green.

Given under my hand and seal this 21st day of October, 1842.

M. M. HOUSTON, [L. S.]
Clerk.

STATE OF ALABAMA, *Coosa county.*

This day personally appeared before me, C. P. Lanford, an acting justice of the peace in and for said county of Coosa, John H. Thomas and Sarah Ann Thomas, being the same persons whose names appear to the *written* deed of conveyance, and in my presence acknowledged to be their act and deed for the purposes therein mentioned; and that said deed of conveyance was signed, sealed, and delivered on the day of its date.

Given under my hand and seal this 24th day of September, 1842, A. D. ——— ———, [L. S.]

Acting justice of the peace, for and in the county of Coosa.

Filed in office, October 21st, 1842.

M. M. HOUSTON, *Clerk.*

Recorded, Nov. 1st, 1842, in book G, page (491.)

M. M. HOUSTON, *Clerk.* [L. S.]

The defendants also read the tabular statement from the War Department, to the following tenor and effect:

Tabular statement. (Tabular statement.)

Tabular statement showing the location of that portion of 29 sections of land reserved under the 6th article of treaty with the Creeks, of 24th March, 1832; the names of the persons to whom the same were assigned by the chiefs and headmen of the tribe in council, on the 7th October, 1835; those sold by auction on the 23d, and those at private sale on the 25th October, 1835; with the names of the purchasers, and the amount paid by each.

Location.							
Sect.	Town.	Range.	District.	Names of Assignees.	Purchasers' names.	Purchase money.	
					Auction sale.		
31	15	25	Tallapoosa..	James Islands, William McGilvery, Benjamin Marshall, and Owitchee-Micco.	Jas. Abercombie.	1,000 00	
33	15	25	....do.....		....do.....	850 00	
21	14	25	....do.....		....do.....	1,110 00	
							2,960 00
25	17	26	....do.....		John Crowell....	1,160 00	
26	17	26	....do.....		....do.....	800 00	
35	17	26	....do.....		....do.....	1,700 00	
36	17	26	....do.....		....do.....	2,120 00	
							5,780 00
15	14	8	Coosa.....		*Private sale.*		
20	13	9	....do.....				
30	13	9	....do.....				
25	13	8	....do.....				
21	13	9	....do.....				
36	14	7	....do.....				
10	14	8	....do.....				
26	14	8	....do.....				
S. ½ of 21	14	8	....do.....				
1	14	8	....do.....		McGehee.....	.....	35,000 00
11	14	8	....do.....				
12	14	8	....do.....				
13	14	8	....do.....				
31	14	8	....do.....				
33	15	25	Tallapoosa..				
8	14	25	....do.....				
17	14	25	....do.....				
							43,740 00

South half 7, 21, 29, assigned to Napoleon Moore, son of Billy Moore.

DEPARTMENT OF WAR,
Off. Ind. Aff's, April 16, 1836.

Remaining five sections assigned to the Creeks west of the Mississippi.

(Signed) ELBERT HERRING.

I recommend the within for approval this 16th April, 1836.

(Signed) LEW. CASS.

I hereby approve and confirm the assignment made by the chiefs and headmen of the Creek nation of the twenty-nine sections, provided for them by the treaty of 24th March, 1832, and of the sale made of the twenty-three and one-half sections placed at the disposal of the assignees, viz., Benjamin Marshall, James Islands, William McGilvery, and Oswitchee-fixico, as shown by the within statement.

Approved this 16th April, 1836.

(Signed) ANDREW JACKSON.

I certify, that the foregoing is a true and correct copy of the original, forwarded to Colonel Hogan on the 19th April, 1836.

Office Indian Affairs, March 29th, 1838.

C. A. HARRIS, *Com'r.*

Be it remembered, that C. A. Harris, who has signed the foregoing certificate, is commissioner of Indian affairs, and that to his attestations full faith and credit are and ought to be given.

In testimony whereof I have hereunto subscribed my name, and caused the seal of the Department to be affixed, on this [L. S.] twenty-ninth day of March, in the year of our Lord one thousand eight hundred and thirty-eight.

S. COOPER,
Act'g Secretary of War.

The land in controversy was proved to be worth over two thousand dollars. The defendant, Scott, also introduced and proved the following agreement between plaintiff and himself, of date 25th January, 1836:

Agreement between Wm. Scott and Erby Boyd.

(Agreement between Wm. Scott and Erby Boyd.)

STATE OF ALABAMA,
Benton county, ss:

Articles made and entered into this 25th of January, 1836, between William Scott and Erby Boyd, witnesseth: That whereas the said Scott has purchased the northwest quarter of section (30), township

(13), range nine east, in the Coosa land district, from one J. T. Bradford, and William McGehee, and J. H. Thomas, for the sum of three *three* thousand dollars; and whereas, also, the said Boyd claims, under purchase, the same from one Augerhole, as the head of a Creek family, under the treaty made and entered into at Washington, on the 24th of March, 1832; now this is conditioned, that if the said Boyd shall recover the same under his claim, then the said Scott shall have the said quarter under the like terms that he purchased it from the said Bradford and McGehee, &c.; and moreover binds himself to give the sum of three thousand dollars for the same to the said Boyd, in the same payment that he has now to give to the said Bradford and McGehee, &c.; it being understood that the said Scott is to pay no rent for the same, and all improvements that he may make on the land to be his, and not to be paid for; it being understood that the sum of three thousand dollars obtains from said Boyd a fee simple title. As witness our hands and seals.

(Signed) WM. SCOTT, [SEAL.]
ERBY BOYD. [SEAL.]

In presence of—
CHAS. LEWIS,
JNO. COCHRAN.

I hereby certify, that the foregoing agreement, purporting to have been made between Wm. Scott and Erby Boyd, is a true and correct copy made by me from the original now before me, and that the same was written out at the special instance and request of the above named Erby Boyd, because of an error discovered only a few minutes since in a copy of the same instrument now in his possession, to wit: In the original said land is described above as the northwest quarter of section (30), township (13), range nine east, in the Coosa land district; and in the copy above referred to, said land is described as the northwest quarter of section (20), same township, range, and land district.

Given under my hand, at Huntsville, State of Alabama, the 21st day of May, 1850. The interlineations, as above, also appear in the original.

THOMAS C. HINDMAN, SEN'R

I further certify, that the original agreement, of which the foregoing is a copy, is in the proper handwriting of Charles Lewis, formerly of Jacksonville, Benton county, Alabama, and that his name appears as a subscribing witness to the same in his own proper handwriting, together with the name of John Cochran, both of whom I am well acquainted with, and also with their handwriting. 21st May, 1850.

THOMAS C. HINDMAN, SEN'R.

Defendants read the deposition of Adrian, in the words and figures following:

Deposition of John D. G. Adrian.

(Deposition of John D. G. Adrian.)

THE UNITED STATES,
State of Texas.

Be it remembered, that on this 6th day of May, A. D. one thousand eight hundred and fifty, Arthur Atkinson, judge of the county court of Smith county, Texas, not being of counsel or attorney to either of the parties, in certain civil cause depending in the district court of the United States of America, for the northern district of Alabama, at Huntsville, in the name of Erby Boyd, plaintiff, and William Green and William Scott, defendants, nor interested in the event of said cause, personally appeared John D. G. Adrian, living in the county of Smith, and State of Texas, first aforesaid, a witness of sound mind and of lawful age, for the said defendants, who being by me first carefully examined, and cautioned, and sworn to testify the whole truth, did depose and say:

I was acquainted with Augerhole, *alious* George Augerhole, a Cherokee Indian, who resided, on the 24th of March, 1832, about four miles above Jacksonville, Benton county, Alabama; and in the summer of that year, 1832, as well as I can recollect, I was at Rabbit Town at the time the census [was] taken. Mr. Parsons had caused the Indians to assemble for the purpose of enrolling them, under the provisions of the said treaty of the 24th March, 1832, at which time I saw said Augerhole, and heard him converse with the chief of said town, who brought up the Indians to have them enrolled; in which conversation said Augerhole stated that he was a Cherokee, and that he was going to the Cherokee nation; that he would not have land in the Creek nation, nor be enrolled; that old Ridge, of the Cherokee nation, had promised him a home in the Cherokee country, and he would not have land in the Creek country. I was with the locating agent afterwards, at the house of said Augerhole, and he refused to be located, still saying he was going to the Cherokee nation. I am acquainted with William Scott and Erby Boyd. Said Boyd applied to me *to me* in the town of Jacksonville, Alabama, in 1838, to the best of my recollection, and asked me to assist and interpret between him and George Augerhole; that he wanted a deed of conveyance, or a power of attorney, from said Augerhole, to act as his agent in relation to his land. I went with Boyd and Augerhole into the house *whar* Thomas C. Hindman was *was* writing, and what the precise terms of the contract was I cannot recollect; but I don't think that there was any consideration passed from Boyd to Augerhole for said land in my presence. I do not recollect of ever being present with Boyd and Augerhole on that business but the one time mentioned; and Boyd could not talk the Creek nor Cherokee language, and he employed me to talk for him, as I understood the Creek language, and as Augerhole understood the Creek language also.

JOHN D. G. ADRIAN.

And I, the said Arthur Atkinson, judge, &c., as aforesaid, do hereby certify, that the reason for taking the foregoing deposition is, that the said witness, John D. G. Adrian, lives at a greater distance than one hundred miles from the town of Huntsville, the place of the trial of the said cause, and that no notification of the time and place of the taking of said deposition from me to the said adverse party to be present at the taking of the same, and to put interrogatories, if he think fit, was made out and served on said adverse party, or his attorney; because neither said adverse party, nor his attorney, was at the time of taking said deposition, within one hundred miles of this place, where the said deposition is taken. And I further certify, that the said deposition was by the said witness, John D. G. Adrian, reduced to writing, and by him subscribed in my presence. I have retained the said deposition in my possession for the purpose of sealing up, directing, and forwarding it to the court for which it was taken.

In testimony whereof I have hereunto set my hand and seal, this 6th day of May, eighteen hundred and fifty.

ARTHUR ATKINSON, [SEAL.]
Judge, &c.

They read the deposition of Houston, in the words and figures following:

(Notice of taking the deposition of M. M. Houston.)

Notice to take the deposition of M. M. Houston.

"IRBY BOYED
vs.
WILLIAM SCOTT, William Green.

Irby Boyed, esq., plaintiff in this cause: You will please take notice, that I, John J. Thomason, judge of the county court of St. Clair county, and State aforesaid, will proceed to take the depositions of Matthew M. Houston and Richard D. Rowland, at the court-house of the county of Benton, in the town of Jacksonville, Alabama, on the 9th day of this instant, to be read in evidence in a certain civil cause depending in the district court of the United States of America, for the northern district of Alabama, at Huntsville, in the name of Irby Boyed, plaintiff, and William Scott and William Green, defendants.

Given under my hand and seal, this the 8th day of November, A. D. 1847.

JOHN J. THOMASON, [L. S.]
Judge of the county court of St. Clair Co., Ala.

I do hereby certify, that I served the within notice on Irby Boyed, in the town of Jacksonville, Benton county, Alabama, on this the 8th day of November, A. D. 1847.

JOHN J. THOMASON,
Judge of the county court of St. Clair Co., Ala."

The UNITED STATES OF AMERICA,
State of Alabama.

Deposition of M. M. Houston.

Be it remembered, that on this the 9th day of November, one thousand eight hundred and forty-seven, before me, John J. Thomason, judge of the county court of St. Clair county, and State aforesaid, not being of council or attorney to either of the parties in a certain civil cause depending in the district court of the United States of America, for the northern district of Alabama, at Huntsville, in the name of Irby Boyd, plaintiff, and William Scott and William Green, defendants, nor interested in the event of said cause, personally appeared Matthew M. Houston, living in the town of Jacksonville, in the county of Benton, and State first aforesaid, a witness of sound mind and lawful age, for the said (William Scott and William Green,) defendants, who being by me first carefully examined, and cautioned, and sworn to testify the whole truth, did depose and say.

Thomas A. Walker, attorney for the defendants, propounded the following question:

[Question.] Are you acquainted with parties to this suit?

Answer. I am acquainted with the plaintiff, Boyd, and defendants, Scott and Green.

Question by defendants' attorney aforesaid: State all you may know in reference to the matters in controversy between the parties.

Answer. I came to the county of Benton in the year 1832, and have resided the greater portion of that time, within about four miles of the land on which the defendant Scott now resides; I have been on the land, or portions of the land, many times; I was one of the locating agents for the Government of the United States, and did locate the Creek Indians in what is *cauled* the Talleseehachee town of Indians, under the Creek treaty of 1832, in the county of Benton; I knew a certain Indian *caled* George Augerhole, and his name was not on the roll or *sensus* list taken under the treaty of 1832; I located the Talleseehatchey town of *of* Indians in the month of December, 1833. Before I proceeded to locate the Indians of the Talleseehatchey town, I caused notice to be given to all the Indians (through the *the* chiefs,) claiming land, or entitled to be located in said town, to assemble at the town-house in said town.

The Indians assembled at the town-house agreeable to notice, about the first of December, 1833. The Indians did assemble, and they were informed that I, as the locating agent of the General Government, would proceed to give them their land, or proceed to locate each head of a family according to the treaty, and I desired them to go with me, and I would point out the land to them; I went to every house in the Talleseehatchey town where an Indian lived, whose name was on the *sensus role*, and located the Indian on the land he resided on, which he was entitled to; and if more than one family resided on the same half section, the oldest settler was located, and the others were located on other land designated for that purpose. I went some time

in December 1833, to the house of an Indian named Steeler, in the Talleseehatchey town, about four miles from the town of Jacksonville, my place of residence, for the purpose of locating Steeler, whose name was on the *sensus role*. George Augerhole and Steeler lived in a few steps of each other; their houses were in the same yard; I located Steeler on the land he resided on; the line of the half section run *threw* a corner of George Augerhole's house. I did not locate George Augerhole on any land; his name was not on the census role, and he was not at home; he had left home; while at the place, some land speculators wanted George located; I inquired into the matter for the purpose of ascertaining why George Augerhole was not enrolled on the census list; I was informed, both by Indians and white men, that George Augerhole had refused to have his name enrolled on the census list, claiming himself to be of the Cherokee tribe, and a Cherokee Indian, and said he did not want land in the Creek nation, and when the Cherokee Indians got their land, he wanted land with them. The day I was at Augerhole's house, I was informed, both by Indians and white men, that Augerhole had left home that morning, for the purpose of preventing any investigation about his location. Ann Augerhole lived in the same house with George, or in the same yard, I do not now recollect which; she had a child, and was the head of a family; she was not located. *Grate* many frauds were practised on the Government under the treaty, and I was specially instructed not to locate any Indian whose name was not on the census list; and also not to locate any Indian whose name was on the census list, when I found they were not the head of a family, or not entitled under the treaty. While discharging the duty of locating Indians in said town, I found several whose names were on the census list, upon investigation, were not entitled to land; I refused to locate them; this is the manner in which I located the Indians.

I lived within four miles of George Augerhole; he never did at any time apply to me to locate him; he knew where I lived; he never claimed the land at any time in my presence; I was the special agent to locate the Indians residing in the counties of Benton and Randolph; George resided in Benton county.

M. M. HOUSTON.

Sworn to and subscribed before me, in the town of Jacksonville, Benton county, Alabama.

JOHN J. THOMASON,
Judge of the county court of St. Clair county, Alabama.
November the 9th, 1847.

Irby Boyd, the plaintiff, being present by himself and counsel.

And I, the said John J. Thomason, judge, &c., as aforesaid, do hereby certify, that the reason for taking the foregoing deposition is, that the said witness, Matthew M. Houston, lives at a greater distance than one hundred miles from the town of Huntsville, the place of the trial

of the said cause, and that notification of the time and place of the taking of said deposition, from me to the said plaintiff, was made out and served by me on Irby Boyed, the plaintiff, to be present at the taking of the same, and put interrogatories if he think fit.

And I further certify, that the said deposition was by me reduced to writing, and by said witness subscribed in my presence. I have retained the said deposition in my possession for the purpose of sealing up, directing, and forwarding it to the court for which it was taken.

In testimony whereof I have hereto set my hand and seal this the ninth day of November, one thousand eight hundred and forty-seven.

JOHN J. THOMASON, [L. S.]

Judge of the county court of St. Clair county, Alabama.

And the said Erby Boyd, the plaintiff, being present at this examination, excepts and objects to each question separately propounded to the witness, Houston, as being leading, illegal, and irrelevant; and he objects and excepts to each clause separately, of the answer of said Houston, and especially to that portion which speaks of locations of Indian reservees, which can, as he is advised and insists, be proved alone by the records of the Government kept of such transactions; and also to that portion of the testimony of said witness which speaks of hearsay of Indians and white persons as to Augerhole's right to land, and his claiming or refusing to claim; and if his objections are overruled, he prays the commissioner to certify his decision for reversion.

ERBY BOYD, *Plaintiff.*

The above objections were made and exceptions taken while the testimony was being taken. I overrule them, and certify them for the decision of the district court. Given under my hand and seal, 9th November, 1847.

JOHN J. THOMASON, [SEAL.]

Judge of the county court of St. Clair county, Ala., commissioner.

They also read the deposition of Knight, in the words following:

(Notice to take the deposition of John Knight.)

THE STATE OF ALABAMA,
Benton county, ss:

To Richard G. Earle, attorney for the plaintiff in a certain matter of controversy now pending in the district court of the United States, for the northern district, holden at Huntsville, Alabama, in which Erby Boyd is plaintiff, and William Green and William Scott are defendants:

Notice of taking the deposition of John Knight.

Please take notice, that on Thursday the 21st instant, (November, 1850,) between the hours of ten o'clock, a. m., and six o'clock, p. m., I shall proceed to take (at my office in Jacksonville) the testimony of John Knight, a witness for the defendants in said cause, and whose testimony, when taken, will be read in evidence on the part of said defen-

dants on the trial of said cause. Herein fail not, when and where you can attend and put interrogatories if you see fit.

Witness Alexander Woods, probate judge of the probate court of Benton county, Alabama, and ex virtute officio commissioner, &c., this 16th day of November, 1850.

Teste: A. WOODS, *Judge P. C.*

I certify, that I have served R. G. Earle, plaintiff's attorney, with a copy of the within notice, this 16th November, 1850.

A. WOODS, *Judge, &c.*

Deposition of John Knight.

(Deposition of John Knight.)

THE UNITED STATES OF AMERICA,
State of Alabama, Benton county.

Be it remembered, that on this 21st day of November, A. D. one thousand eight hundred and fifty, before me, Alexander Woods, judge of the probate court of Benton county, in said State of Alabama, not being of counsel or attorney to either of the parties in a certain civil cause depending in the district court of the United States of America, for the northern district of Alabama, at Huntsville, in the name of Erby Boyd, plaintiff, and William Scott and William Green are defendants, nor interested in the event of said cause, personally appeared John Knight, who resides in the county of Cherokee, and State aforesaid, at my office, at the court-house in the town of Jacksonville, in the aforesaid county of Benton, between the hours of 10 a. m., and 6 p. m., a witness of sound mind and lawful age, for the defendants, who being by me first carefully examined, and cautioned, and sworn to testify the whole truth, did depose and say as follows:

Interrogatory 1st. Are you acquainted with the parties to this suit?

He saith: I am acquainted with the parties to the above entitled cause.

Interrogatory 2d. Were you ever acquainted with an Indian by the name of George Augerhole?

He saith: I was.

Interrogatory 3d. When and where did you become acquainted with him; and where did he live; and how far did you live from him?

He answers: He first became acquainted with him in the spring of the year 1832, on the place where William Scott now lives, the lands embraced in this suit; a part of his house being on this land, and a part on the land given to Charley Steeler, as his reservation, the line passing through his house; I lived at that time about four hundred yards from Augerhole's residence.

Interrogatory 4th. Did you ever have a conversation with him in regard to his taking or getting land under the treaty between the United States and the Creek tribe of Indians; and if you say you did, when and where was it, and how often did you so converse; and who else

was present; and what did he say in said conversation or conversations? Stating the whole as near as you can recollect.

The plaintiff's attorney objects to the 4th interrogatory, and every part thereof, as being leading, irrelevant, and illegal; which said objections was overruled, and the witness answers, as follows:

That he had several conversations with the aforesaid Augerhole, relative to the land embraced in this suit. He says that he thinks the first time he heard said Augerhole speak of it was some time in the spring or summer of the year 1832, to the best of his recollection, which was at his (Augerhole's) own house; the conversations between us, in regard to said land, *was* frequent, but I can not say how often. He says he does not know that any person was present at the first conversation; a man by the name of Black (a linguister) was present at several latter conversations; he further says that in the first, and several other conversations, he (the said Augerhole) said he was a Cherokee Indian, and did not intend to take land in the Creek nation; that if he did take land, he would have to go off with the Creek Indians. I went out to Augerhole's house, at the time he told me the rest of the Indians *was* gone to get their names enrolled, and I asked him why he (Augerhole) did not go to get his name enrolled; and he said that he was a Cherokee Indian, and was building a house in the Cherokee nation, and intended to move there some time in the fall of the year 1833, as well as I recollect. I heard Moses Benson try to buy the land where Augerhole lived, and Augerhole told Benson that he was going to move to the Cherokee nation, and did not intend to take land in the Creek nation.

Interrogatory 5th. State if Augerhole ever moved away from said place, and where he moved to, when he left, &c.; and where it was he moved to.

He saith: That Augerhole moved away from said place, and I saw him afterwards several times in a little house on Ball Play creek, in the Cherokee nation.

Interrogatory 6th. If, at the time you first became acquainted with George Augerhole, you knew of other Indian families residing in the same yard with the said Augerhole, state who they were; and if you know of their being located under the Creek treaty, say so; and where did said Indians work land?

He answers: An Indian and his family, by the name of Steeler, lived in the same yard with said Augerhole; I knew that Steeler was located under the Creek treaty, as I was present at the time of his location; he was located on land adjoining the place where Augerhole lived; the said Augerhole and Steeler worked on the land in controversy.

Interrogatory 7th. State whether George Augerhole was present at the time Steeler was located.

He answers: That the said Augerhole was not present.

Interrogatory 8th. If you know of any white person or persons using any threats of violence to scare or force Augerhole off of said place, state them.

To which said last question plaintiff's attorney objects to, as being

illegal; which objection is overruled, and the witness answers as follows:

I never knew of any, nor heard Augerhole speak of any.

JOHN KNIGHT.

Sworn to and subscribed before me, this 21st day of Nov'r, 1850.

A. WOODS, *Judge, &c.*

Cross interrogatories propounded by plaintiff's attorney.

Cross interrogatory 1st. In the conversations you say you had with Augerhole, did he converse in the Creek, Cherokee, or English language?

He saith: It was a mixture of Cherokee and English, and signs.

Cross interrogatory 2d. Do you understand the Cherokee language?

He saith: I do not understand it fully, but I could always make out to understand enough of it to trade with them; some things I could not understand, and some I could.

Cross interrogatory 3d. You say that one Black was present at some of the conversations, and described him as a linguister; was he a sworn linguister, in the employment of Government; and, as such sworn linguister, did he interpret the conversations referred to?

He says: That said Black was a mere transient man, and never, as I recollect, interpreted the conversations referred to; I never knew him to be in the employment of Government as a linguister; he spoke the Cherokee language.

Cross interrogatory 4th. Do you know the numbers of the land in controversy?

I do not know the lands in controversy by the numbers; I spoke of the land where Augerhole lived, where Scott now lives.

Cross interrogatory 5th. Do you know, of your own knowledge, that the land William Scott now lives on is the land in controversy in this suit?

He saith: He does not; plaintiff and defendant told me it was.

Cross interrogatory 6th. You say you did not understand the Cherokee language fully; that your conversations with said Augerhole had to be carried on partly by signs; can you say, on oath, that in said conversations with Augerhole you might not possibly have been mistaken; can you say positively that you were not mistaken?

He saith: I was not mistaken.

Cross interrogatory 7th. Explain whether you got your information mostly from his language or his signs.

He saith: I got it mostly from his language.

Cross interrogatory 8th. Might not Augerhole have been present at the time that Charley Steeler was located without your seeing him?

He saith he might *of* been in some of the houses, but I did not see him. Further this deponent saith not. JOHN KNIGHT.

Sworn to and subscribed before me, this 21st day of Nov., 1850.

A. WOODS, *Judge, &c.*

And I further certify, that I made out and served a notification to said adverse party to be present at the time and place of taking said deposition as above, and to put interrogatories, if they should think fit; which said notification was served on R. G. Earle, esq'r, the attorney of said adverse party, on the 16th day of Nov., 1850, who was within one hundred miles of the place of taking said deposition as aforesaid, and who was nearer said place than said adverse party; which said attorney was, at the time of serving said notification, within one hundred miles of the place of this caption, and the place of taking said deposition as aforesaid, and that time was allowed for the attendance of said adverse party, and of said attorney, at the time and place of taking said deposition as aforesaid, not less than at the rate of one day, Sundays exclusive, for every twenty miles travel in attending the same, after the service of said notification, as aforesaid. And I further certify, that the witness resides more than one hundred miles from Huntsville, the place of holding court. I also further certify, that R. G. Earle, esq., resides in the town of Jacksonville, the place of taking this deposition, who is plaintiff's attorney. And I further certify, that the said deposition was by me reduced to writing, and by said witness subscribed in my presence. I have retained the said deposition in my possession for the purpose of sealing up, directing, and forwarding it to the court for which it was taken.

In testimony whereof I have hereunto set my hand and seal, this the 21st day of November, eighteen hundred and fifty.

A. WOODS, [L. S.]

Probate judge of pro. court, for Benton county, Ala.

Deposition of Andrew C. Robinson.

They also read the deposition of Robinson, in the words and figures following:

(Deposition of Andrew C. Robinson.)

THE UNITED STATES OF AMERICA,
State of Alabama.

Be it remembered, that, on this 30th day of January, A. D. one thousand eight hundred and forty-nine, before me, Robert H. Wilson, judge of the county court of *of* Benton county, and State aforesaid, not being of counsel or attorney to either of the parties in a certain civil cause depending in the district court of the United States of America, for the northern district of Alabama, at Huntsville, in the name of Erby Boyd, plaintiff, and William Scott and William Green, defendants, nor interested in the event of said cause, personally appeared Andrew C. Robinson, living in the town of Jacksonville, in the county of Benton, and State first aforesaid, a witness, of sound mind and lawful age, for the said defendants, who being by me first carefully examined, and cautioned, and sworn to testify the whole truth, did depose and say, to the first interrogatory of defendants, which is—

Interrogatory first. Are you acquainted with the parties?

Answer. I am acquainted with the parties to this suit.

[2]d interrogatory. Were you acquainted with an Indian by the name of George Augerhole, in the county of Benton, and State aforesaid?

He answers: I was acquainted with said Indian in the year 1833, and whilst he lived in the county of Benton, and State aforesaid.

3d interrogatory. Were you intimately acquainted with him; and if so, why do you say that you were intimately with him?

He answers: That he was intimately acquainted with him; and the reason why witness so answers is, that he is a blacksmith, and worked, and done his blacksmithing for him during that year, and that said Augerhole had staid all night at his, witnesses, house several times during the time; and that said witness had some knowledge of the Creek language, which said Augerhole spoke; and he, the said Augerhole, spoke some English.

4th interrogatory. Do you know the place where the said Augerhole resided whilst here?

He answers: He does; he does not know the numbers of the land; but that it is the place where defendant, Wm. Scott, now resides, and which he had heard spoken of as the *clame* of said Augerhole, whilst said Augerhole lived in Benton county.

Interrogatory 5th. Did you ever try to buy said place from said Augerhole, (being the place where said Augerhole lived whilst he was in the county of Benton,) and state his answer to you, and give a full statement of all that occurred between you and him; and if he refused to sell to you, why he so refused.

He answers: I proposed, during that year, to said George Augerhole to buy his said land; he refused to sell to me; he said he was a Cherokee Indian and had married a Creek woman, and that he did not want any land in the Creek nation, and would not have any; that his land was in the Cherokee nation, and he intended to have land there; and the reason he would not have Creek land was, that the Creek Indians were selling their land, and were going to *Arkinsaw*, and that he would not go, and that he intended to leave the Creek country, and move into the Cherokee country. He further said, if he were to take any land in the Creek country that he would rather let him, witness, have it, than any other person; but that he was determined not to have land in the Creek country, and had none to sell. Witness at the time was fearful that he did not understand said Augerhole, as he was anxious to buy, and offered him the silver for it; and lest he might be mistaken, employed a good *linkister*, who reported the same answer to him, upon a further treat to purchase; witness therefore abandoned any further attempt to purchase, and said George Augerhole soon after left here, and when he next saw him, which was shortly after, he asked said Augerhole where he lived; and he, said Augerhole, said he lived on Ball Play, in the Cherokee country.

6th interrogatory. State all you know that will benefit the defendants.

He answers: He knows nothing further.

ANDREW C. ROBINSON.

Sworn to and subscribed before me, this 30th Jan., 1849.

R. H. WILSON,
Judge C. C. B. C.

And I, the said Robt. H. Wilson, judge, &c., as aforesaid, do hereby certify, that the reason for taking the foregoing deposition is, that the said witness, Andrew C. Robinson, lives at a greater distance than one hundred miles from the town of Huntsville, the place of the trial of the said cause; and that no notification of the time and place of the taking of said deposition from me to the said adverse party, to be present at the taking of the same, and to put interrogatories, if he think fit, was made out and served on said adverse party or his attorney, because neither said adverse party, nor his attorney, was, at the time of taking said deposition, within one hundred miles of this place, where the said deposition is taken. And I further certify, that the said deposition was by me reduced to writing, and by said witness subscribed in my presence. I have retained the said deposition in my possession for the purpose of sealing up, directing, and forwarding it to the court for which it was taken.

In testimony whereof I have hereto set my hand and seal, this 30th day of January, eighteen hundred and forty-nine.

R. H. WILSON, [SEAL.]
Judge, &c.

The pltff. also read deposition of William Tatum, in words and figures, following:

(Notice to defendants of taking Wm. Tatum's deposition.)

Notice to take deposition of Wm. Tatum.

To William Scott and William Green: You will please take notice that I shall, on Saturday, the 17th day of this month, at the house of William Tatum, in Benton county, near Terrapin creek, at the hour nine o'clock, a. m., proceed to take the deposition of the said William Tatum, to be read on the trial of a cause depending in the district court of the United States, held for the northern district of Alabama, at Huntsville, Alabama, wherein Erby Boyd is plaintiff, and you are defendants, on behalf of the plaintiff. You can be present and cross examine if you choose.

ROBERT H. WILSON,
Judge county court, Benton co., Ala.

March 16, 1849.

Executed the within notice on Wm. Scott and Wm. Green, the defendants in this case, March the 16th, 10 o'clock, a. m., of said day, and neither of the defendants live over twelve miles from the place of taking said deposition.

R. H. WILSON, *Judge C. C.*

(Deposition of William Tatum.)

Deposition of Wm. Tatum.

THE UNITED STATES OF AMERICA,
State of Alabama, Benton county.

Be it remembered on this, the 17th day of March, A. D. one thousand eight hundred and forty-nine, before me, Robert H. Wilson, judge of the county court of Benton county, and State of Alabama, not being of counsel or attorney to either of the parties in a certain civil cause, depending in the district court of the United States of America, for the northern district of Alabama, at Huntsville, in the name of Erby Boyd, plaintiff, and William Scott and William Green, defendants, nor interested in the event of the said cause, at the house of William Tatum, in Benton county, Alabama, personally appeared the said William Tatum, living in said county of Benton, and State aforesaid, a witness of sound mind and of lawful age, for the said plaintiff, who being by me first carefully examined, and cautioned, and sworn, (the said defendant, William Scott, being present at said examination on behalf of said defendants) did depose and say, as follows:

1st direct interrogatory by plff. Are you acquainted with the parties to this suit?

Answers: I am.

2d interrogatory. If you are acquainted with George Augerhole and family, state what nation or tribe of people *the* belong to; what was the number of his family, of whom *the* consisted; when and where you became acquainted with them; how long you *new* them, and where you then lived.

Answer. George Augerhole was a Cherokee Indian, and his wife was a Creek woman; he had a wife and one child; his wife was named Waka, and his child was named Watty; I became acquainted with George Augerhole and family, as well as I recollect, in the early part of the year 1832, a short time before the news reached this country, that the Creek Indians had treated away their land to the United States; I *new* them in the year 1832 and 1833, while he lived on the half section of land at present occupied by William Scott and William Green, now in dispute in this suit. The said George Augerhole made crops on the said land in the years 1832 and 1833; I *new* them up to the year 1835 or 1836; I then lived in Benton county, on a quarter section of land adjoining that on which George Augerhole lived.

Interrogatory 3d. If you know of any threats or efforts made by any person or persons to prevent the said Augerhole from claiming his reservation as the *hed* of a Creek family under the treaty of 1832 with the United States, state it, and what took place at the time; and if the said Augerhole claimed his reservation, state how you know it.

Answer. A short time after we had heard about the treaty, a servant of Peter Upshaw came to me with the request to go to the assistance of her master, who had a difficulty with some Indians, who had assem-

bled to build a house on piece of land near to where said Augerhole lived, for Ann Augerhole, who was the daughter of George Augerhole's wife, who afterwards got a reservation in her own right, and for me to bring my gun; in about a half or ¾ of an hour I met the said Upshaw, with Richmond Harris, Richard Rutledge, Walton Kemp, and Milton Kemp, and some other white men, who lived in the neighborhood, most of them with guns, coming from where the house was being raised, and the Indians apparently much frightened, coming at some distance before them; Augerhole, his wife, and Ann Augerhole with them, going towards where said Augerhole lived; and such Indians as were at the house raising, and did not belong to Augerhole's *amediate* family, passed on, and did not stop; Augerhole, his wife, and Ann Augerhole (who was the daughter of Augerhole's wife) stopt at Augerhole's house, and Augerhole's wife brought out a bottle of whiskey, and invited us all to drink; Augerhole and his family appeared to be frightened; Upshaw said that if the Indians were allowed to settle in by us, and were not run off, *the* would take all our improvements; I heard no other threats at that time; Augerhole at his own house appeared to offer every mark of conciliation, of friendship, on his part. The said white men went on after the *the* Indians which had passed by, and asked me to go with them; I refused to go, and *the* asked me to loan them my gun, which I told them to go to my house and take it; which *the* did; I do not understand, the Indian language very well, nor did Augerhole speak the English language very plain; I never heard him say any thing about his reservation, until after Charley Steeler, who was the husband of his wife's sister, had been located by the locating agent. Augerhole then sent for me and my wife to go to his house; he then made me understand, partly by signs and partly by speaking English and Indian, that he wanted to know why he had not been located, and if I would assist him in procuring his location he would give me a part of the land; he appeared very desirous to get land. The old woman, the wife of Augerhole, was crying when we got to the house; she appeared to be pleased when we got there, and went in the house and brought an armful of potatoes for us to carry home to our children. Augerhole and his wife went off that evening some where, and they returned next day.

Interrogatory 4th. If you were present when the locating agent located Charley Stealer, state, as well as you can recollect, what persons were present; who *the* were; where *the* lived; and state on what land Steeler was located.

Answer. I was present when M. M. Houston, the locating agent, located Charley Steeler; he was located on the half section of land which contains the quarter on which I lived; it joined that claimed by Augerhole, but was on another section; there was no Indian present; there were several white men present; Moses Benson, who then lived where Wm. Scott now lives, and Mr. Knight, who lived on the same section, but not on the same half section claimed by Augerhole; he lived on the northeast quarter; Mr. John Boozer, my brother, John

W. Tatum, and myself. I don't think I have named all that were there, but I don't remember who all were present. I heard Mr. Benson and Mr. Knight, on that occasion, tell M. M. Houston, the locating agent, that Augerhole had said he was a Cherokee Indian, and did not want land; the agent replied, if he did not want land he would not give him any; that Mr. Boozer looked at me and shook his head and smiled, when Mr. Benson and Mr. Knight [told] the agent that Augerhole had said he did not want land.

Interrogatory 5th. What disposition did Augerhole make of his land and house after the [year] 1833?

Answer. Augerhole, in the latter part of the fall, or fore part of the winter, after he had made his crop on said place in 1833, he went 4 or 5 miles to a place called Ball Play, and took his hogs with him into the range, and to hunt, and left his bedding and clothing at my house, and said he would return when the leaves put out in the spring to plant corn. He locked up his house, and, to the best of my recollection, he left his bee-stands locked up in his house, but some time afterwards I looked, and the bee-hives were not in the house. A short time after Augerhole left, as above stated, Mr. Benson and Mr. Hammontree took possession of his field, and commenced cutting and rolling logs in it. Augerhole then rented his land to Isaac Allen, to the best of my recollection.

The defendant, Wm. Scott, being present at the examination of the witness, and on behalf of himself and his co-defendant, Wm. Green, objects, under the rules of the court, as being insufficient and illegal; objects to taking the deposition because the plaintiff has no right under the notice and rules of the court to take it; he objects to any thing Augerhole told witness as being evidence; and if said objection be overruled, he propounds the following cross interrogatories:

Cross interrogatory 1st. On what piece of land had the Indians assembled to build the house for Ann Augerhole, and from what piece of land did the white men drive off the Indians; how far was it from the land claimed by George Augerhole?

Answer. It was about a mile from Augerhole's house, on an adjoining section, and was the same quarter on which Mr. Upshaw lived. The house that was being built was not on the land claimed by George Augerhole.

Cross interrogatory 2d. Was the fuss raised in relation to the Augerhole place?

Answer. It was not, but Upshaw's threats seemed to embrace all the Indians.

Cross interrogatory 3d. Did you ever hear any threats used to Augerhole, or any of his family, in relation to his claiming land; and if so, was Augerhole present?

Answer. I never heard any threats used towards Augerhole in relation to his claim to land more than towards other Indians. A short time, or a few weeks after the Indian Steeler was located, an Indian woman came to my house, in the night, and hallowed Iuco, two or

three times, which I understood was for me to make haste. I then went over to Charley Steeler's house, which was in the same yard with Augerhole's house. When I got there, I found Samuel Cobbler, John Palmore, and as well as I recollect, Russell Palmore, in a quarrel or fuss with Augerhole's wife, Steeler's wife, and Ann Augerhole. The quarrel appeared to be directed mostly to Steeler's wife, but all of them were very much imposed upon and insulted. I told the Indian women that it was a very cold night, and told them to go to my house, which *the* did. Before going, Steeler's wife gave me the key to her house, and requested me, when I could get the men out of the house, she wished me to lock *they* door; as soon as I could get them out of the house I locked the door. Directly after, Samuel Cobbler got an axe and broke the door open. Cobbler remarked that Steeler had got old Billy Latone's (meaning witness) land, and said if we let the Indians alone *the* would get all the white people's improvements; and said, after the row was over, he thought that two or three more such fusses as the one that had just taken place would cause the Indians to leave. The three men engaged in this fuss were white men, and the father of the Palmores had a field on the land in litigation in this suit. I did not see any of the Indian men, but the women told me that Steeler was lying out. I don't recollect of any thing being said about Augerhole, or seeing him that night, and I believe that the three white men above spoken of were intoxicated.

Cross interrogatory 4th. Was the fuss you speak about in the third cross interrogatory in relation to Augerhole's claim to land; and was it with Augerhole?

Answer. I heard nothing said about Augerhole's claim to land in particular; the fuss was in Augerhole's yard and in Steeler's house, and was with Steeler's wife and Augerhole's wife and Ann Augerhole; Steeler's wife was most abused, but all the women were insulted and imposed upon. George Augerhole was not there, as [I] saw, and of course I saw no fuss with him.

Cross interrogatory 5th. What year was the fuss you speak about in?

Answer. It was shortly after the Indian, Charles Steeler, was located. My memory is indistinct, and I did not keep dates; but *but* a few days or weeks, at most.

Cross interrogatory 6th. Where was Augerhole a living when he applied to you to assist him in getting him located on his land, and in what year was it?

I cannot say. He was back and forwards from Ball Play to his place. The most of his household furniture, and his money, he left at my house. His stock he had taken to the range on Ball Play, where he stayed part of his time; my recollection as to the year is indistinct, but it was in a few days after Steeler was located. The crop of corn, fodder, and potatoes, were *at* on the land on which it was made—the same in dispute—and claimed for his own, and held to it as long as he could, or until it was taken forcible possession of by Benson and Hammontree. He then rented it to Allen, Isaac. He, said

Allen, Benson, and Hammontree, had a trial of some sort, when Allen lost the suit. All of the above three men, to wit, Allen, Benson, and Hammontree, are white men. Augerhole then rented the land to a white man by the name of Pallmore, who had a trial of some sort, either by arbitration or otherwise, with Benson and Hammontree, which terminated by dividing the cleared land betwixt Palmore, Benson, and Hammontree.

The plaintiff objects to all that part of the above answer which relates to any trial as illegal.

his
WILLIAM ⋈ TATUM.
mark

And I, the said Robert H. Wilson, judge of the county court of Benton county as aforesaid, do further certify, that the preceding deposition was reduced to writing by me, and afterwards signed by the said witness, and that I am not of counsel or attorney for either of the said parties to said suit, nor am I interested in the event thereof. And I further certify, that I made out and served on the said defendants, who both live in the said county of Benton, and within twelve miles of William Tatum's house, the place of taking this deposition, and nearer the said place than their attorney, a notification to be present at the taking of the same; which said notification was served on the defendants on the 16th day of March, 1849, in which was mentioned, among other things, the time and place aforesaid of taking said deposition; and it was further stated, in said notification, that said defendants could put interrogatories to said witness if they should think fit. I further certify, that defendants had time, after said notification was served on them, and before said deposition was taken, for their attendance at the taking of the same, more than at the rate of one day for every 20 miles' (Sundays excepted) travel in attendance on the same. The foregoing are the reasons, and the facts are as above stated, for which said deposition was taken. And I further certify, that said deposition, together with my certificate of the reasons of their being taken, and of the notice to said adverse party as aforesaid, were retained by me until the same were sealed up by me, and directed by me to the district court of the United States, for the northern district of Alabama, at Huntsville. And that the said defendant, Scott, was present at the said examination of said witness, and put interrogatories to said witness, and claimed to do so for himself and his co-defendant, Green, who did not appear. And I do further certify, that the place of taking said deposition, and the place where the said witness resides, (the deposition being taken at the house of the witness,) is more than one hundred miles from Huntsville aforesaid, where the said civil cause is to be tried.

In testimony whereof I have hereunto set my hand and seal, this March 19th, 1849.

R. H. WILSON, [L. S.]
Judge of the county [court] of Benton county, Ala.

Also depositions of Isaac Allen and Edward Allen, in words and figures following:

Deposition of Isaac Allen.

(Deposition of Isaac Allen.)

The United States of America, district court of the United States, for the northern district of Alabama, at Huntsville.

Between,

ERBY BOYD, plaintiff,
vs.
WILLIAM SCOTT and William Green, defendants.

Tresspass to try titles, &c.

Be it remembered, that, I, George W. Lane, judge of the fifth judicial circuit, in and for the State of Alabama, have, on this the 29th day of April, A. D. 1847, at the court-house, in the town of Jacksonville, in the county of Benton, and State of Alabama, which is more than one hundred miles from Huntsville aforesaid, where the said civil cause is to be tried, the following witnesses in said cause, who are the witnesses of the said plaintiff, and who all live in the said county of Benton, at a greater distance from said place of trial than one hundred miles; the testimony of each of the said witnesses being necessary in said civil cause in said court, which is depending between said parties as aforesaid, namely, Isaac Allen.

And the said witnesses being by me carefully examined, and cautioned, and duly sworn, to testify the whole truth and nothing but the truth, the said Isaac Allen, being first called, states on oath:

That he is acquainted with the parties to this suit, to wit, Erby Boyd, the plaintiff, and William Greene and William Scott, the defendants; he is also acquainted with George Augerhole and his wife, Wakiah; he is also acquainted with the land in controversy; he first became acquainted with Augerhole and his wife in [the] fall of 1833; he resided in about one mile of them; Augerhole and his wife resided on the land in controversy, to wit, on the quarter section that defendant, Scott, now lives on; he had a dwelling-house, and a field containing some four or five acres, on said land; it was generally reported amongst the Indians, as well as whites, that Wakiah, wife of said Augerhole, was a Creek woman; and general report further said that she was the sister of Steeler's wife; also of Ladiga, each of whom got land under the Creek treaty of 24th March, 1832; and Augerhole resided on said land until some time in 1834, and then rented his improvements to witness, and Augerhole removed some nine miles into the Cherokee nation, on a creek called Ball Play; and witness took possession, and commenced building a house on said land; in witness's absence one Benson took possession; witness endeavored to recover possession by suit before a magistrate, but failed to recover; that Benson was a white man, and head of a white family, and had no claim to the land under the treaty aforesaid; in [the] fall of 1834 said Augerhole

returned, and endeavored to regain possession of said land; one Hammontree, who had got possession from Benson, refused to give him possession; the doors of Augerhole's house was nailed up in the fall of thirty-four, but witness can't say who by; witness understood from Augerhole, on his return, that he claimed the land under the aforesaid treaty, and never heard of Augerhole's abandoning his claim to the land; witness was requested by said Augerhole, in connexion with William Tatum, to go to the locating agent, and know if he, Augerhole, could obtain his land; that witness and Tatum did see the locating agent, Matthew M. Houston, and made known the request of Augerhole to him; said agent replied that Augerhole would get his land; that said Houston was the locating agent who located Charley Steeler on the adjoining land, and who located all the Indians in Tallasehatchee town of Indians; in which town Augerhole and family resided; when said locating agent came into that neighborhood, Augerhole and wife *was* absent at the time agent was locating the Indians in said town; witness heard of no notice being given as to the time the agent would be there; at the time the locating agent came around, Moses Benson and Robert Caskey resided on said half section of land; at the time of location no other head of Creek Indian family resided on said half section besides Augerhole.

Cross examination by defendant.

Witness says he does not know the land by its numbers, nor don't know the number of the quarter section that Mr. Scott now resides on, and never saw any of the lines except the section lines. Witness says he could understand some little of Indian language, but very little, but could not understand what Augerhole would say in relation to his claim, except through an interpreter. Witness says there were three houses close together; one was occupied by Steeler and Ann Augerhole, the other by George Augerhole; the third was an out-house, without any chimney. Ann Augerhole had a child. Steeler's improvements were on the same side of line (except his house) with Augerhole's.

Rebutting examination by plaintiff.

The section line which was marked, running east and west, was between the houses of Augerhole and Steeler. The improvements above spoken as belonging to Steeler, located on the Augerhole side of the line, consisted of a field embracing six or seven acres. Witness says he heard the locating agent, through the interpreter, inquire of Charley Steeler and Ann Augerhole if they claimed the land cleared by George Augerhole. They said they did not; as the interpreter stated this as the best of the witness's recollection; and that he saw the locating agent locate Steeler on another half section of land on the same day.

And further deponent saith not.

ISAAC ALLEN.

(Here follows the deposition of Spartan Allen, not made a part of the bill of exceptions.)

And I do further certify, that the preceding depositions were reduced to writing by me, and afterwards signed by said witnesses respectively, and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof. I further certify, that I made out, and served upon the said defendants, as well as their attorney of record, a notice of the time and place of taking said deposition. I further certify that said defendants, as well as their said attorney, reside in the county of Benton, in the State of Alabama, within five miles of the town of Jacksonville, the place of taking these depositions; and that said notification was served on said defendants, and on their attorney, on the 25th day of April, 1847, which mentioned, among other things, the time and place of taking said depositions; and it was further stated in said notification that said defendants, by themselves or either of them, or by their said attorney, could put interrogatories to said witnesses if they should think fit. I further certify that said defendants had time, after said notification was served on them, and before said depositions were taken, for their attendance at the taking of the same, more than at the rate of one day (Sundays exclusive) for every twenty miles travel in attending the same; and that said defendants and their said attorney did attend said examination of said witnesses, and cross examine each of them respectively. The foregoing are the reasons, and the facts are as above stated, for which said depositions were taken. I further certify, that said depositions, together with my certificate of the reasons of their being taken, and of the notice to the adverse party as aforesaid, were retained by me until the same were sealed up by me, and directed to the district court of the northern district of Alabama, at Huntsville.

In testimony whereof I have hereunto set my hand and seal, the day and year first above written.

GEO. W. LANE, [L. S.]
Judge of 5th judicial circuit, Alabama.

Notice to take the deposition of Edward Allen.

(Notice of taking the deposition of Edward Allen.)

"JACKSONVILLE, *March* 19, 1849.

TO WILLIAM SCOTT AND WILLIAM GREEN:

You are hereby notified, that under the agreement entered into between us, and filed in court, in the cause hereinafter named, I shall, at the court-house in the town of Jacksonville, in Benton county, on Tuesday, the 20th instant, proceed, at 9 o'clock in the forenoon, to take the deposition of Edward Allen, to be read in a cause depending in the district court of the United States, for the northern district of Alabama, at Huntsville, Alabama, wherein I am plaintiff and you are defendants. You may be present, and cross examine, if you choose.

ERBY BOYD.

(Endorsed:) Executed by reading the within to the defendants, Wm. Scott and Wm. Green, 9 o'clock, the 19th March, 1849, in the town of Jacksonville; and the residence of neither of said defendants is more [than] 7 miles from said town of Jacksonville.

R. H. WILSON, *Judge C. C.*

Deposition of Edward Allen.

(Deposition of Edward Allen.)

THE UNITED STATES OF AMERICA,
State of Alabama, Alabama.

District court of the United States, for the northern district of Alabama, at Huntsville, Alabama.

ERBY BOYD, plaintiff,
vs.
WILLIAM SCOTT and
William Green, defendants.
} *Trespass to try title.*

Be it remembered, that I, Robert H. Wilson, judge of the county court of the county of Benton, in the State of Alabama, and district aforesaid, have, on this 20th day of March, 1849, caused to come before me, at the court-house of Benton county, in the town of Jacksonville, in the said county, (the same being under a consent rule made and entered into by the parties aforesaid, before the time of taking this deposition, and entered upon record in said cause,) Edward Allen, a witness in said civil cause, who is the witness of said plaintiff, and who lives in the county of Benton; the testimony of said witness being necessary in said civil cause in the said district court, which is depending between said parties as aforesaid, namely, in which Erby Boyd is plaintiff, and William Scott and William Green are defendants. And the said witness being by me carefully examined, and cautioned, and duly sworn to testify the whole truth, and nothing but the truth, states upon his oath, as follows:

Interrogatory 1st. Are you acquained with the parties to this suit?

Answer. Yes, sir.

Interrogatory 2. How far do you live from the defendants, and the land in dispute in this suit; and how long have you and the defendants lived where you now live?

Answer. Something like a mile and [a] half or two miles from the defendants, and about one mile from the nearest part of the land now in dispute between the above named parties; I have been living there from the spring of 1833; I don't recollect how long Scott has been living where he now lives; to the best of my recollection Green has lived where he now lives ever since 1840 or 1841.

Interrogatory 3d. If you were ever acquainted with George Augerhole, state where and when you became acquainted with him; how long you knew him; if he had a family, state their names, and what

tribe or nation of people *the* belonged; and on what half section of land he and family lived; and when you first knew them.

Answer. I was acquainted with George Augerhole; I first became acquainted with him in the spring of 1833, and was acquainted with him until the troops carried him off, as I understood, (from the country;) I did not see them take him away; I was acquainted with him some three or four years; I recollect distinctly that he had a family, a wife and a little boy; I was frequently there buying venison hams and the like; there *was* two women there, Wake and Nelly; I don't know which was Augerhole's wife; *the the* were Indian women, and said to be daughters of Sally Ladiga, who was an Indian woman of the Creek tribe; and Augerhole was said to be a Cherokee Indian; there was a young Indian woman, called Ann Augerhole, said to be the daughter of Augerhole's wife, lived in the same yard in a house to herself, and had one child; when I first *new* George Augerhole, he lived on the west half ($\frac{1}{2}$) of section thirty, (30,) township thirteen, (13,) range nine (9) E., in the Coosa land district.

Interrogatory 4th. State what facts you know in relation to the said Augerhole claiming his reservation under the treaty with the United States, made with the Creek tribe of Indians in March, 1832; and what land he claimed. Tell all you know about it.

Answer. I have heard him frequently claiming his reservation, but the most I ever knew about it was after Charley Steeler was located; a day or two after Charley Steeler had been located, the locating agents, to wit, M. M. Houston, and two other gentlemen that I did not *no*, assembled at Jacksonville, going over to Rabbit Town for the purpose of locating the Indians in that town, to wit, Rabbit Town; and while at Jacksonville, I heard Augerhole talk to several white men, claiming his reservation; he was then on his way to Rabbit Town to see the locating agents, to claim his reservation; and while M. M. Houston and the other two gentlemen, who I understood to be locating agents, were consulting about something a *peas* off from me, while he, George Augerhole, was conversing with Dick Rush, who was an Indian that could talk English, about his reservation, in my presence, when one of the locating agents, to the best of my recollection, M. M. Houston, said that he, Augerhole, need not go to Rabbit Town, as the locating agents had concluded to locate him; the locating agent, M. M. Houston, to the best of my recollection, in the presence of the other two agents, *ast* if any person in the company could make Augerhole understand them, when some person present, as well as I recollect, Mr. Tatum, said he could; he then told Tatum to tell Augerhole that he need not go to Rabbit Town as the locating agents had concluded to let him have his land, and that he should be located on it. A man by the name of Hix, who said he wanted to buy Augerhole's land where he was located, as soon as he heard the agent say that he would be located, got Augerhole off from the crowd immediately, and I did not see any thing more of him until that evening on my return home; I found him lying by the side of the road drunk; he lived on the same road that

leads to my house, and on the same lands now occupied by William Scott and William Green, the defendants in this suit; Augerhole claimed the property as his own as long as he staid in the country.

Interrogatory 5th. If you ever heard any threats made by white men, at any time, about Augerhole, calculated to make him abandon his land, state what men they were that made those threats and where *the* lived, and all you know in relation to it.

Answer. I don't know that I ever heard any person threaten him if he did not abandon his land; but I was going round his field on one occasion, and I saw a Mr. Miller, two of his sons, and his son-in-law, by the name of McCasky, together with Moses Benson and Hugh Hammontree, white men, who lived on the same section of land, in the little field that the Indians had had in corn, cutting logs: Augerhole went down through the field where *the* were cutting; I could not hear what he said to them; the gestures and motions for him to leave, told him that he had no land *their;* and told him if he did not go off *the* would put him in jail.

Interrogatory 6th. Whose field was it that Miller, his son, and sons-in-law were cutting logs in; and what land was it; how far was it from Augerhole's house, where he lived; and in what year was it, as near as you can recollect?

Answer. It was a field claimed by Augerhole and his brother, Charley Steeler, and was occupied by them both at that time; it contained about 6 or 7 acres, and was divided in the middle by a row of peach trees, but was all under one fence; it was on the same half section of land claimed by Augerhole as his reservation, and the same now in litigation in this suit; and was about two hundred or two hundred and fifty yards from the house of Augerhole; this occurrence took place a day or two after the location of the Indian Charley Steeler, or the time I understood he was located; I do not recollect the date precisely, but think it was in the early part of 1834.

Interrogatory the 7th. If you know any thing about any white man's renting the said land from Augerhole, state when it was, and when it was to be delivered up to the said Augerhole under that contract.

Answer. In 1834 or 1835, in '35 I think, I *I* was present at George Chambers, when George Augerhole rented his land to Hezekiah Pallmore, for which he gave him his note. I was called on by Pallmore to go with him down on Ball Play, to see George Augerhole, for the purpose of renting from Augerhole his land; I went with him, Pallmore; and when we got to where Augerhole was, on Ball Play, *the* talked about trading a while, and Pallmore told me that he could not trade there, and that we would have to go to George Chambers, who could act as *linkister;* and, accordingly, we went to said Chambers; at which time the contract above mentioned was made between George Augerhole and Hezekiah Pallmore, when Pallmore gave said Augerhole his note for the rent of his, Augerhole's, land, and was to give

him, Augerhole, up the possession of said land when he gathered his crop of corn.

Interrogatory 8th. What was the value of the *the* yearly rents, per acre, of the cleared land, in possession of the defendant, Scott, from the year 1840 up to this time?

Answer. $3.00 per acre, per annum.

Interrogatory 9th. What number of acres of cleared land was there on said one-quarter section in the possession of said Scott in the year 1840?

Answer. As well as I can recollect, about 40 or 50 acres.

Interrogatory 10th. What amount of cleared land is there on said quarter now?

Answer. About 90 acres, as well as my memory serves me.

Interrogatory 11th. How long has there been as much as ninety acres cleared on it?

Answer. As well as my memory serves me, about 3 years.

Interrogatory 12th. What was the value of the yearly rents, per acre, of the cleared land, on the quarter in possession of William Green, from 1841 up to this time?

Answer. About $2 50 per acre.

Interrogatory 13th. What amount of cleared land was there on said quarter section in 1841?

Answer. I do not *no*.

Interrogatory 14th. How much at this time?

Answer. I have never examined particular[ly,] but I suppose about 50 acres. I have not examined any of the land on *n*either of the quarter sections, and do not *no* what would be the value of the rents.

Interrogatory 15th. State all you know that will benefit the plaintiff.

Answer. I have already stated, in answer to the foregoing interrogatory, all that I recollect that would benefit either of the parties.

EDWARD ALLEN.

I do further certify, that the preceding deposition was reduced to writing by me, and afterwards signed by the said witness; and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof. And I further certify, that I made out and served, on the said parties defendant, who both live within the said county of Benton, within six miles of Jacksonville, the place of taking said deposition, and nearer the said place than their attorney of record, a notification, in writing, to be present at the taking of the same; in which said notification it was stated, among other things, that the defendants could put interrogatories to the witness if *the* chose. I further certify that, in obedience to the said notification, the said defendants were both present at the time and place of the examination of said witness, and had James L. Lewis, an attorney at law, present with them, to attend to the said examination of said witness, and refused to put interrogatories to the witness, although they had the privilege, and were requested so to do, if they should think proper. The foregoing

are the reasons, and the facts are as above stated, for which said depositions were taken.

And I further certify that said deposition, together with my certificate of the reason of their being taken, and the notice to said adverse parties, were retained by me until the same were sealed up, by me, and directed to the district court of the United States, for the northern district of Alabama, at Huntsville.

In testimony whereof I have hereunto set my hand and seal, the day and year above written.

R. H. WILSON, [L. S.]
Judge C. C., of Benton county.

The court charged the jury that the treaty conferred a title on the heads of all Indian families to 320 acres of land; that, notwithstanding this, the Indian who might be the head of a family had a right to decline accepting the land; and if the jury were satisfied, from the evidence, that Augerhole had so declined, the plaintiff acquired no title by his purchase from Augerhole, unless he had been constrained, by threats, or the fear of violence, or injury, to withhold his claim.

That when the person or persons appointed by the Government to take the census of the Indians passed through the country for that purpose, and made his or their business known, by public notice, and by calling the Indians together to have their names registered, it was the duty of Augerhole to apply to have his name registered; and if, by failing to do so, his land was appropriated to other purposes of the treaty, he would have no right afterwards to set up a claim to it.

The court further charged the jury that, at the expiration of five years, the heads of Indian families, who had made their selections, were entitled to patents from the Government for their reservations, if they were desirous of remaining in the country; but it was their duty in some form to manifest a determination to remain, and if they failed to do so, the United States had a right to sell the land, and the Indians lost their title thereto. It was in evidence that the Indian in question went into the Cherokee country in 1834, and never afterwards made any efforts to secure his land, or expressed any intention to any officer of the Government to remain in the country.

The court further charged the jury, that the failure of Augerhole to be enrolled and located within five years, worked a forfeiture of the land to the United States, unless deterred by fear or threats.

The court further charged that, altho' the land in controversy was, under the 6th article of the treaty, within five years after the ratification of the treaty, for the benefit of the Creek tribe, that this would operate a forfeiture of Augerhole's right of reservation, unless, before said location for such tribe, he had made application to be located, if he had full opportunity for doing so.

To each of these charges the plaintiff, by attorney, excepts, and now in open court tenders this his bill of exceptions, and prays that the

same be signed and sealed by the court, and made a part of the record, which is accordingly done in open court, this 29th November, 1850.

JOHN GAYLE. [SEAL.]

(Endorsed:) Filed 29th day of November, 1850.
Teste; B. T. MOORE, *Clerk.*

And now, afterwards, to wit, on the said twenty-ninth day of November, being a day of the term of said district court last aforesaid, begun and held at the court-house, in the town of Huntsville, in said district, on the fourth Monday in said month, (November,) in the year of our Lord one thousand eight hundred and fifty, an entry was made in said cause, in the words following, to wit:

Minute entry allowing writ of error.

This day comes the plaintiff, by his attorneys, and prayed a writ of error to the next term of the Supreme Court of the United States; whereupon it is ordered, that said plaintiff enter into bond, with good and sufficient security, in the sum of one thousand dollars, payable to said defendants, conditioned to prosecute said writ of error to effect, and also to pay and satisfy the judgment which shall be rendered in said cause. And the said Erby Boyd, together with Silas Parsons, his security, having entered into bond in the penalty aforesaid, conditioned as aforesaid, which bond is here approved by said court. It is thereupon ordered, that a writ of error in said cause, as aforesaid, be allowed.

(*Writ of error bond.*)—Writ of error bond.

Know all men by these presents, that we, Erby Boyd, of Polk county, in the State of Tennessee, and Silas Parsons, of Madison county, in the State of Alabama, are held and firmly bound unto William Scott and William Greene, of the county of Benton, in the northern district of Alabama, in the penal sum of one thousand dollars, lawful money of the United States; for the due payment of which we, and each of us, do bind ourselves, our, and each of our, heirs, executors, and administrators, jointly and severally, firmly by these presents. Witness our hands and seals this the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and fifty.

Whereas, at a term of the district court of the United States of America, for the northern district of Alabama, at Huntsville, begun and held at the court-house, in the town of Huntsville, in said district, on the fourth Monday in November, in the year of our Lord one thousand eight hundred and fifty, the said William Scott and William Greene obtained a judgment against the above bounden Erby Boyd, for the costs [of] the suit in said court, in the name of said Erby Boyd, plaintiff, against said William Scott and William Green, defendants, amounting to the sum of dollars cents, in which case the

above bounden Erby Boyd hath obtained a writ of error returnable to the next term of the Supreme Court of the United States.

Now, the condition of the above obligation is such, that if the above bounden Erby Boyd shall prosecute the said writ of error to effect, and shall also pay and satisfy the judgment which shall be rendered in said cause by the Supreme Court, then the above obligation to be void, else to remain in full force and virtue.

ERBY BOYD, [SEAL.]
SILAS PARSONS. [SEAL.]

Signed, sealed, and acknowledged in the presence of—

I approve the within bond, and allow the writ of error. November 29th, 1850.

JOHN GAYLE,
Judge, U. S. district court, for Alabama.

(Endorsed:) Filed 29th November, 1850.
Teste: B. T. MOORE, *Clerk.*

(*Writ of error.*)—Writ of error.

UNITED STATES OF AMERICA:

The President of the United States of America, to the judge of the district court of the United States, for the northern district of Alabama, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in the said district court, before you, between Erby Boyd, who is a citizen of the State of Tennessee, plaintiff, and William Scott and William Green, who are citizens of the State of Alabama, residing in the northern district thereof, defendants, a manifest error hath happened to the great damage of the said Erby Boyd, as by his complaint appears; and we being willing that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the said Supreme Court, at the next term thereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court aforesaid of the United States, this thirtieth day of November, in the year of our Lord one thousand eight hundred and fifty, and in the seventy-fifth year of the independence of the said United States.

[L. S.]

Attest: B. T. MOORE, *Clerk D. C.*